

Chapter 3

Systems and controls



3.3 Additional requirements for insurance distribution

Application

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■ SYSC 3.3 applies to an *insurer* in the course of it carrying on any *insurance distribution activities*.
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Identifying conflicts

- 3.3.5

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A *firm* must take all appropriate steps to identify conflicts of interest that arise between:

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

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

[Note: article 28(1) of the *IDD*]
- 3.3.6

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For the purposes of identifying, in accordance with ■ SYSC 3.3.5R and ■ SYSC 3.3.13R, the types of conflicts of interest that arise in the course of carrying out any *insurance distribution activities* related to *policies* 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:

(1) it is distinct from the *client's* or potential *client's* interest in the outcome of the *insurance distribution activities*;

(2) it has the potential to influence the outcome of the *insurance distribution activities* to the detriment of the *client*.

		<p>A <i>firm</i> must proceed in the same way for the purposes of identifying conflicts of interest between one <i>client</i> and another.</p>
3.3.7	R	<p>For the purposes of the assessment in ■ SYSC 3.3.6R, a <i>firm</i> must take into account, by way of minimum criteria, the following situations:</p> <ul style="list-style-type: none">(1) the <i>firm</i>, a <i>relevant person</i> or any <i>person</i> directly or indirectly linked to it by <i>control</i> is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the <i>client</i>;(2) the <i>firm</i>, a <i>relevant person</i> or any <i>person</i> directly or indirectly linked to it by <i>control</i> has a financial or other incentive to favour the interest of another <i>client</i> or group of <i>clients</i> over the interest of the <i>client</i>;(3) the <i>firm</i>, a <i>relevant person</i> or any <i>person</i> directly or indirectly linked by <i>control</i> to the <i>firm</i> is substantially involved in the management or development of <i>policies</i>, in particular where such a <i>person</i> has an influence on the pricing of those <i>policies</i> or their distribution costs. <p>[Note: article 3 of the <i>IDD Regulation</i>]</p>
3.3.8	R	<p>Managing conflicts</p> <p>A <i>firm</i> must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest identified under ■ SYSC 3.3.5R from adversely affecting the interests of its <i>clients</i>.</p> <p>[Note: article 27 of the <i>IDD</i>]</p>
3.3.9	R	<p>Proportionality</p> <p>The arrangements in ■ SYSC 3.3.8R must be proportionate to the activities performed, the <i>policies</i> sold and the type of <i>insurance distributor</i> the <i>firm</i> is or uses.</p> <p>[Note: article 27 of the <i>IDD</i>]</p>
3.3.10	R	<p>Conflicts policy</p> <ul style="list-style-type: none">(1) For the purposes of ■ SYSC 3.3.8R and ■ SYSC 3.3.9R, a <i>firm</i> 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 <i>firm</i> is a member of a group, the policy must also take into account any circumstances, of which the <i>firm</i> 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. <p>[Note: article 4(1) of the <i>IDD Regulation</i>]</p>

Contents of policy

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The conflicts of interest policy required in ■ SYSC 3.3.10R 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*]

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- (1) The procedures and measures required in ■ SYSC 3.3.11R(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 3.3.11R(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 intermediary* 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

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- (1) If arrangements made under ■SYSC 3.3.8R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must:
 - (a) clearly disclose to the *client* the general nature or sources of the conflicts of interest (or both); and
 - (b) include sufficient detail in the disclosure, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the *insurance distribution activities* in the context of which the conflict of interest arises.
- (2) The disclosure must be made:
 - (a) in a *durable medium*; and
 - (b) in good time before the conclusion of the *contract of insurance*.

[Note: article 28(2) and (3) of the *IDD*]

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- (1) A *firm* must avoid over-reliance on disclosure to ensure that disclosure to *clients*, under ■SYSC 3.3.13R 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 3.3.8R and ■SYSC 3.3.9R 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*]

Review of conflicts policy

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For the purposes of ■SYSC 3.3.8R, a *firm* must assess and periodically review, on an at least annual basis, the conflicts of interest policy established in

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accordance with ■ SYSC 3.3.10R and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the *IDD Regulation*]

Record keeping

- (1) A *firm* 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 *client* has arisen or, in the case of an ongoing service or activity may arise.
- (2) A *firm* must ensure its senior management receives on a frequent basis, and at least annually, written reports on the situations referred to in (1).

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

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A *firm* carrying on *insurance distribution activities* in relation to *insurance-based investment products* must retain its records relating to:

- (1) suitability (■ COBS 9A); and
- (2) appropriateness (■ COBS 10A),

for a period of at least five years.

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- (1) ■ COBS 9A.4 and ■ COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) contain record keeping requirements that specify information which should be recorded by *firms* in relation to *insurance-based investment products* and for how long the records must be retained.
- (2) For the purposes of ■ SYSC 3.3.17R, a *firm* will need to consider whether the requirement in ■ COBS 9A.4.3R or ■ COBS 10A.7.2AR means that a record needs to be retained for longer than five years.

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- (1) The records required under ■ COBS 9A.4 and ■ COBS 10A.7 must be retained in a medium that allows the storage of information in a way accessible for future reference by the *FCA*.
- (2) The *FCA* must be able to access the records in (1) readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the *IDD Regulation*]