DISTANCE MARKETING DIRECTIVE INSTRUMENT 2004

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) (a) section 118(8) (Market abuse);
    (b) section 138 (General rule-making power);
    (c) section 139(1) and (4) (Miscellaneous ancillary matters);
    (d) section 145 (Financial promotion rules);
    (e) section 147 (Control of information rules);
    (f) section 149 (Evidential provisions);
    (g) section 156 (General supplementary powers);
    (h) section 157(1) (Guidance);
    (i) section 247 (Trust scheme rules); and

(2) (a) regulation 6(1) of The Open-Ended Investment Companies
    Regulations 2001 (SI 2001/1228);
    (b) regulation 3 of the Electronic Commerce Directive (Financial Services
    and Markets Act 2000) Regulations 2002 (SI 2002/1775); and
    (c) regulation 2 of the Financial Services and Markets Act 2000 (Fourth

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force as follows:

(1) Annex B (Amendments to the Insurance: Conduct of Business sourcebook) comes into force on 14 January 2005;
(2) Annex C (Amendments to the Mortgages: Conduct of Business sourcebook) comes into force on 31 October 2004; and
(3) the remainder of this instrument comes into force on 9 October 2004.

Amendments to the Handbook

D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct of Business sourcebook (COB)</td>
<td>Annex A</td>
</tr>
<tr>
<td>Insurance: Conduct of Business sourcebook (ICOB)</td>
<td>Annex B</td>
</tr>
<tr>
<td>Mortgages: Conduct of Business sourcebook (MCOB)</td>
<td>Annex C</td>
</tr>
<tr>
<td>Market Conduct of Business sourcebook (MAR)</td>
<td>Annex D</td>
</tr>
<tr>
<td>Authorisation manual (AUTH)</td>
<td>Annex E</td>
</tr>
<tr>
<td>Credit unions sourcebook (CRED)</td>
<td>Annex F</td>
</tr>
</tbody>
</table>
Citation

E. This instrument may be cited as the Distance Marketing Directive Instrument 2004.

By order of the Board
15 April 2004
Annex A

Amendment to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

Transitional provisions

…

COB TR1

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Material to which the transitional provision applies: The COB provisions in Table COB TR 2 with the labels indicated</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1.0 Extra time provisions

1.1 ETP1 R Transitional Relief

…

(2) Paragraph (1) does not apply to the following:

…

(j) …;

(k) (from 9 October 2004) any rule in COB inserted or amended by the Distance Marketing Directive Instrument 2004 and, in the case of an amendment, to the extent of such amendment.

…

…

…
After the miscellaneous transitional rules table, insert the following new table:

COB 5

Table: Distance Marketing Directive transitional rules (applicable to all firms)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>COB</td>
<td>Delayed amendment of COB for non-distance contracts</td>
<td>From 9 October 2004 for 12 months</td>
<td>Already in force</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The amendments to COB made by the Distance Marketing Directive Instrument 2004 on 9 October 2004 do not apply in relation to business which does not involve the conclusion of a distance contract with a retail customer, provided that the firm complies with the requirements of COB in force immediately before 9 October 2004, taking account of any amendments which come into force after that date.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Exception for provision of key features to EEA customers</td>
<td>From 9 October 2004, indefinitely</td>
<td>Already in force</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
</tbody>
</table>
| **COB 6.2.21R(1)(a) and COB 6.2.24R(1) R** | (1) There is no requirement for *key features* to be provided for a new *life policy*, variation to a *life policy* or in respect of a *scheme* if, at the time he signs the application, the *customer*:

(a) (in the case of a *life policy*) is *habitually resident* in an *EEA State* other than the *United Kingdom*; or

(b) (in the case of a *scheme*) is not present in the *United Kingdom*;

provided that the conditions in (2) are satisfied.

(2) The conditions referred to in (1) are that:

(a) the *EEA State* in which the *private customer* is (as applicable) *habitually resident* or present imposes requirements on the communication of pre-contract information (beyond the minimum required by Community legislation) when doing the *designated investment business* concerned from an establishment in the *United Kingdom*; and

(b) the *firm* complies with COB 6.4.25R, in respect of the *packaged product*, as if references to “accepting deposits” and “deposits” were references to “designated investment business” and “packaged products” respectively.
Non-investment insurance contracts: compliance with DMD Regulations or ICOB

When an insurer effects or carries out a non-investment insurance contract which is a distance contract, then either:

(1) the Distance Marketing Regulations (other than regulation 2(3)) apply as if the insurer was an unauthorised person; or

(2) (if the insurer has elected) the rules in ICOB which implement the DMD apply.

An election under (2) is irrevocable and applies in relation to all such contracts. The insurer must make a record of the election and retain it for 6 years from 14 January 2005.

In this transitional provision:

“ICOB” means the Insurance: Conduct of Business sourcebook; and

“non-investment insurance contract” means a contract of insurance which is a general insurance contract or a pure protection contract but which is not a long-term care insurance contract.

Chapter 1 General application and general provisions

1.2.1 R COB applies to every firm, except that:

(4) COB does not apply to an authorised professional firm with respect to its non-mainstream regulated activities except for:

…
(c) the following provisions of COB 4.2 (Terms of business and client agreements with customers): COB 4.2.1R to COB 4.2.6G, COB 4.2.9R to COB 4.2.11E and COB 4.2.15E(26) COB 4.2.12AE and COB 4 Ann 2E(25).

1.2.5 G Authorised professional firms should be aware of the following:

(1) PROF 5.2 (Nature of non-mainstream regulated activities);

... 

1.3.2 G (2) Most of COB applies in relation to regulated activities, conducted by firms, which fall within the definition of designated investment business. In relation to deposits, COB has limited application, as described in COB 1.11 (Application of COB in relation to deposits). In relation to pure protection contracts and general insurance contracts, COB has only limited application.

Application for private customers, intermediate customers and market counterparties and retail customers

1.3.3 G ...

(3) Some rules in COB (mainly those relating to distance contracts) use the term “retail customer” rather than “customer”, “private customer” or “intermediate customer”. A retail customer is an individual who is acting for purposes which are outside his trade, business or profession.

... 

1.3.5 G Firms are reminded that the definition of inter-professional business does not include:

... 

(3) ...

(4) concluding a distance contract with a retail customer.

... 

1.4.3 R This sourcebook applies in relation to activities not within COB 1.4.2R (UK establishments: general) carried on with or for a client in the United Kingdom, unless (if the office from which the activity is carried on were a separate person) the activity except in any of the following cases:

(1) this sourcebook does not apply in relation to an activity carried on from an office outside the United Kingdom which, if that office were a separate person, if the activity would fall within the overseas persons
exclusions in article 72 of the Regulated Activities Order; or (2) would not be regarded as carried on in the United Kingdom; or

(2) COB 4.2 (Terms of business and client agreements with customers), COB 5 (Advising and selling) and COB 6 (Product disclosure and the customer’s right to cancel or withdraw) do not apply to a firm with respect to an activity exclusively concerning a distance contract with a retail customer, if the following conditions are satisfied:

(a) the firm carries on the activity from an establishment maintained by the firm in an EEA State other than the United Kingdom;

(b) either that EEA State:

(i) has implemented the DMD; or

(ii) has obligations in its domestic law corresponding to those provided for by the DMD;

and, in either case, with the result that the obligations provided for by the DMD (or corresponding obligations) are applied by that State when the firm carries on that activity; and

(c) the firm is a national of an EEA State or a company or firm mentioned in article 48 of the Treaty.

...

1.4.7 R In addition to the situations in COB 1.4.2R and COB 1.4.3R, COB 6 (Product disclosure and the customer’s right to cancel or withdraw) applies in relation to long term insurance business if the habitual residence of the client is in the United Kingdom, other than except:

(1) COB 6.3 (Post-sale confirmation: life policies) and;

(2) COB 6.9 (With-profits guides); and

(3) (in relation to the conclusion of a distance contract with a retail customer and if the conditions in COB 1.4.3R(2) are satisfied) COB 6.7 (Cancellation and withdrawal) and any provision of COB 6 which requires the provision of information prior to the conclusion of the contract, applies in relation to long term insurance business if the habitual residence of the client is in the United Kingdom.

General insurance business

1.4.8 R In addition to the situations in COB 1.4.2R and COB 1.4.3R, COB 6.8 (Insurance contracts: life and general) applies in relation to general insurance business if the State of the risk is the United Kingdom (except, in relation to
the conclusion of a distance contract and if the conditions in COB 1.4.3R(2) are satisfied, any provision of COB 6.8 which requires the provision of information prior to the conclusion of the contract).

...  
1.6.2 R Table Provisions of COB applied to stock lending activity  
This table belongs to COB 1.6.1R  

<table>
<thead>
<tr>
<th>COB</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>6.7</td>
<td>Cancellation and withdrawal, but only in relation to distance contracts concluded with retail customers</td>
</tr>
</tbody>
</table>

...  
1.6.4 R Table Provisions of COB applied to corporate finance business  
This table belongs to COB 1.6.3R  

<table>
<thead>
<tr>
<th>COB</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>6.7</td>
<td>Cancellation and withdrawal, but only in relation to distance contracts concluded with retail customers</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

...  
1.6.5A G COB 6.7 (Cancellation and withdrawal) has limited application for corporate finance business. Distance contracts concluded with retail customers in the course of corporate finance business are exempt from COB 6.7 if the price of the financial service is dependent on fluctuations in the financial market outside the firm’s control (COB 6.7.17R, row 2, case 15(a)).

...  
The Distance Marketing Directive.

1.9.3 G The Distance Marketing Directive is also relevant for electronic commerce activities and communications. The E-Commerce Directive applies in relation to any commercial transaction entered into over the Internet; the Distance Marketing Directive applies only in relation to contracts for financial services concluded exclusively by any means of distance communication such as telephone, fax or mail as well as electronic communications. COB 1.10 (Application of the Distance Marketing Directive and the Distance Marketing Regulations) provides guidance on the Distance Marketing Directive.

After COB 1.9 insert the following new sections:
1.10 Application of the Distance Marketing Directive and the Distance Marketing Regulations

1.10.1 This section provides guidance on certain expressions used in COB that are derived from the Distance Marketing Directive and on the application of the Distance Marketing Regulations.

Initial service agreement and successive operations

1.10.2 This sourcebook adopts the concepts of "initial service agreement" and "successive operations" from the DMD.

(1) A firm's contract with a customer may take the form of an initial service agreement under which successive operations or a series of separate operations of the same nature are performed over time. Where this is the case, the DMD disclosure and cancellation requirements apply in relation to the initial service agreement only and not to the successive or separate operations. However, if new elements are added to the initial service agreement, the addition of those new elements is treated as a new contract to which the DMD disclosure and cancellation requirements apply. In accordance with recital 17 of the Distance Marketing Directive, examples are:

(a) the opening of a bank account, which would be an initial service agreement, and the deposit or withdrawal of funds from that account which would be a successive or series of separate operations under that initial agreement; however, adding a debit card to the account would be the addition of a new element involving a separate contract; and

(b) concluding an investment management agreement would be an initial service agreement, and carrying on discretionary or advisory transactions under that agreement would be a successive or a series of separate operations under it.

Other examples are, in the FSA’s view:

(c) opening a brokerage account for the purposes of trading securities, and transactions under that account;

(d) establishing a facility to enable a customer to subscribe to an ISA for the present and future tax years, and successive subscriptions under that agreement;

(e) subscribing to an investment trust savings scheme, and successive purchases or sales of shares under that scheme; and

(f) concluding a life policy, pension contract or stakeholder pension scheme that includes a pre-selected option providing for future increases or decreases in regular premiums or payments, and subsequent index-linked changes to those
premiums or increases or decreases to pension contributions following fluctuations in salary.

(2) Even if a firm has not entered into an initial service agreement with a retail customer, but simply performs successive operations or a series of separate operations of the same nature for a retail customer over time, the DMD disclosure requirements will not apply to the successive or separate operations, provided there has been an operation of the same nature within the past year. But if it has been longer than a year, the next operation will be treated as the first in a new series of operations and the DMD disclosure requirements will apply. In accordance with recital 17 of the Distance Marketing Directive, an example of “successive operations” is the subscription to units of the same collective investment scheme.

Retail customer

1.10.3 G (1) The Distance Marketing Directive provides protections for ‘any natural person who, in distance contracts … is acting for purposes which are outside his trade, business or profession’, for which the FSA uses the term ‘retail customer’. In practice, private individuals may act in a number of capacities. In the FSA’s view retail customer does not include an individual acting, for example:

(a) as trustee of a trust such as a housing or NHS trust; or

(b) as member of the governing body of a club or other unincorporated association such as a trade body or a student union; or

(c) as a pension trustee (but see COB 6.4.19R and COB 6.7.8R regarding the information and cancellation rights of such trustees).

(2) Examples of retail customers are:

(a) personal representatives, including executors, unless they are acting in a professional capacity, for example, a solicitor acting as executor; or

(b) private individuals acting in personal or other family circumstances for example, as trustee of a family trust.

1.10.4 not used

Use of intermediaries

1.10.5 G The mere fact that an intermediary (acting for the supplier or for the retail customer) is involved, does not make the sale of a financial product or service a distance contract. The same principles apply as in the case of contact between the supplier and a retail customer. For example, if the intermediary and retail customer are simultaneously physically present at some stage in the
course of the offer, negotiation and conclusion of a contract, the contract will not be a *distance contract*.

**Distance contracts for intermediation services**

1.10.6 G Some of the services which some intermediaries provide will themselves fall within the scope of the *DMD*. The *FSA* expects this to apply in only a small minority of cases, for example where the intermediary agrees to provide continuing advisory, broking or portfolio management services for a *retail customer*. The *DMD* is only relevant if:

1. there is a contract between the intermediary and the *retail customer* in respect of the intermediary's mediation services; an intermediary may in its *terms of business* make clear that it does not, in providing its mediation services, act contractually on behalf of, or for, its *retail customer* and then proceed on the basis that no contract for its mediation services will arise;

2. the contract is a *distance contract*; and

3. the contract is concluded other than merely as a stage in the provision of another service by the intermediary or another person (see *COB 4 Ann 1R(13) and COB  6.7.17, Row 1, case D(a)*).

**Application of parts of the Distance Marketing Regulations**

1.10.7 G *COB* implements most of the *Distance Marketing Directive* for distance contracts concluded by *firms*, the making or performance of which constitutes, or is part of, *designated investment business* or *accepting deposits*. However, certain aspects of the *Distance Marketing Directive* are implemented by provisions of the *Distance Marketing Regulations*, which apply in addition to *COB*, in particular:

1. regulation 11 (Automatic cancellation of an attached distance contract) on which there is guidance in *COB 6.7.51A*; and

2. regulation 13 (Payment cards).

1.11 Application of *COB* in relation to deposits

1.11.1 G Table: Application of rules in *COB* in relation to deposits

<table>
<thead>
<tr>
<th>COB</th>
<th>Subject matter</th>
<th>Application for cash deposit ISAs</th>
<th>Application for other deposits</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.5.3R</td>
<td>Exclusion of liability</td>
<td>√ *</td>
<td>√ *</td>
</tr>
<tr>
<td>2.6</td>
<td>General provisions related to distance contracts</td>
<td>√ *</td>
<td>√ *</td>
</tr>
<tr>
<td>3.5.5R to 3.5.7R 3.8.4R to 3.8.5E</td>
<td>Financial promotions</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>3.9.6R(1) and 3.9.8R</td>
<td>Direct offer financial promotions</td>
<td>√ *</td>
<td>X</td>
</tr>
<tr>
<td>Rule</td>
<td>Description</td>
<td>Apply</td>
<td>Partial Apply</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>-------</td>
<td>---------------</td>
</tr>
<tr>
<td>6.1.4R, 6.1.5R, 6.2.2R, 6.4.13R, 6.5.2R(2), 6.5.3R, 6.5.42R</td>
<td>Key features</td>
<td>√ *</td>
<td></td>
</tr>
<tr>
<td>6.2.2R, 6.4.13R, 6.5.2R(2), 6.5.3R, 6.5.42R</td>
<td>Provision of key features or other information in relation to a telephone call</td>
<td>√ *</td>
<td></td>
</tr>
<tr>
<td>6.2.2R, 6.4.13R, 6.5.2R(2), 6.5.3R, 6.5.42R</td>
<td>Pre-contract information when entering into a distance contract for accepting deposits</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>6.7.7R(1), 6.7.7R(3)</td>
<td>Cancellable contracts</td>
<td>X</td>
<td>√ *</td>
</tr>
<tr>
<td>6.7.10R(2), 6.7.10AR, 6.7.11R, 6.7.28R</td>
<td>Cancellation period</td>
<td>√ *</td>
<td></td>
</tr>
<tr>
<td>6.7.51R</td>
<td>Effects of cancellation</td>
<td>√ *</td>
<td></td>
</tr>
<tr>
<td>6.7.42R, 6.7.44R</td>
<td>Exercising the right to cancel</td>
<td>√ *</td>
<td></td>
</tr>
<tr>
<td>6.7.52R</td>
<td>Obligations on cancellation</td>
<td>√ *</td>
<td></td>
</tr>
</tbody>
</table>

Note:

1. Those rules marked with "X" do not apply; those marked with √ do apply. Those marked * will not apply to a firm which subscribes to the edition of the Guidance for subscribers to the Banking Code [in force on 9 October 2004]. Instead, the firm must comply with certain provisions of the Banking Code Guidance (COB 1.11.2R).

2. This Table lists rules imposing obligations. It does not list all application rules, exemptions, transitional rules or guidance.

Exemption for firms which follow the Banking Code Guidance

1.11.2 R (1) The rules in COB 1.11.3R do not apply in relation to accepting deposits, to a firm which subscribes to the “Guidance for subscribers” to the Banking Code (the 'Banking Code Guidance’) issued by the British Banker’s Association, the Building Societies Association and the Association for Payment Clearing Services [edition in force on 9 October 2004].

(2) In relation to a firm in (1) the provisions of the Banking Code Guidance in COB 1.11.3R apply as if they were rules.

1.11.3 R Table: This table belongs to COB 1.11.2R(2)
Chapter 2 Rules which apply to all firms conducting designated investment business

... 2.5.1 R (1) This section (other than COB 2.5.5R) applies to a firm that makes any written or oral communication to a customer in the course of, or in connection with, its conducts designated investment business.

(2) This section (other than COB 2.5.3R and COB 2.5.4R) applies to a firm which enters into a distance contract to accept deposits with a retail customer.

Purpose

2.5.2 G This section amplifies Principle 6 (Customers' interests) which requires a firm to pay due regard to the interests of its customers and treat them fairly. A firm may not exclude the duties it owes or the liabilities it has to a customer under the Act or the regulatory system. It may exclude the other duties and liabilities only if it is reasonable for it to do so.

Limits on the exclusion of liability: designated investment business

2.5.3 R A firm must not in any written or oral communication, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability it may have to a customer (which for these purposes includes a retail customer) under the regulatory system.

... Limits on the exclusion of liability: distance contracts to accept deposits
2.5.5 R A firm must not, in any written or oral communication to a retail customer in connection with a distance contract to accept deposits with a retail customer, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability it may have to a retail customer under COB (but see COB 1.11.2R (Exemption for firms which follow the Banking Code Guidance)).

After COB 2.5 (Exclusion of liability), insert the following new section:

2.6 General provisions related to distance contracts

Application

2.6.1 R This section applies to a firm which:

(1) conducts designated investment business with or for a retail customer in relation to a distance contract; or

(2) enters into a distance contract to accept deposits with a retail customer (but see COB 1.11.2R (Exemption for firms which follow the Banking Code Guidance)).

Pre-contract information about contractual obligations to be in conformity with contract

2.6.2 R A firm must ensure that information provided to a retail customer before the conclusion of a distance contract about his contractual obligations under that contract conforms with the contractual obligations that would be imposed on him under the law applying if the contract were concluded.

Unsolicited services

2.6.3 R Subject to COB 2.6.4R, a firm must not:

(1) advise on, arrange, enter into or conduct any designated investment business in relation to a distance contract with a retail customer without a prior request on his part, when the supply of such service includes a request for immediate or deferred payment; or

(2) enforce any obligations against a retail customer in the event of unsolicited supplies of such services, the absence of reply not constituting consent.

2.6.4 R COB 2.6.3R does not apply for a tacit renewal of a distance contract.

Paper copy of contractual terms and conditions

2.6.5 R During the course of a distance contract with a firm, if a retail customer requests a paper copy of his contractual terms and conditions, the firm must provide it without additional charge and without delay.

Change in means of distance communication
2.6.6 R During the course of a distance contract, a firm must comply with a retail customer's request to change the means of distance communication used, unless this is incompatible with the distance contract concluded or the service being provided by the firm.

3.3.1 R This chapter applies to a firm only in relation to:

(3) ...

subject to COB 3.3.3R (Exceptions to territorial scope: rules without territorial limitation) and COB 3.3.4AR (Exceptions to territorial scope: distance contracts).

3.3.3 R The following parts of this chapter apply without any territorial limitation, subject to COB 3.3.4AR:

3.3.4A R (1) Notwithstanding COB 3.3.1R and COB 3.3.3R, this chapter, other than the rules in (3), does not apply to a firm when it communicates a financial promotion, if the conditions in (2) are satisfied:

(2) The conditions are that:

(a) the firm communicates the financial promotion from an establishment maintained by the firm in an EEA State other than the United Kingdom, and not from an establishment maintained by the firm in the United Kingdom or outside the EEA;

(b) either that EEA State:

(i) has implemented the DMD; or

(ii) has obligations in its domestic law corresponding to those provided for by the DMD;

(c) the financial promotion relates, exclusively, to a distance contract, for the conclusion of which the obligations provided for by the DMD (or corresponding obligations) are applied by that State; and
(d) the firm is a national of an EEA State or a company or firm mentioned in article 48 of the Treaty.

(3) The rules which continue to apply, notwithstanding this rule, are:

(a) COB 3.8.4R (Non-real time financial promotions: clear, fair and not misleading; comparisons; restriction of information on compensation);

(b) COB 3.8.22R(1) and (2) (Real time financial promotions);

(c) COB 3.9.5R (Prohibited types of direct offer financial promotion);

(d) COB 3.10 (Unsolicited real time financial promotions);

(e) COB 3.11 (Unregulated collective investment schemes and qualified investor schemes); and

(f) COB 3.13.1R (Additional requirements for financial promotions for an overseas long-term insurer).

3.9.6 R (1) A direct offer financial promotion must be in a durable medium and contain sufficient information to enable a person to make an informed assessment of the investment or service to which it relates.

(2) In particular, a direct offer financial promotion must contain:

(a) the information set out in COB 3.9.7R App 1 (the information in COB App 1.1.1R(1) and (4) must be provided in relation to the person offering the investment or service and, if different, the firm communicating or approving the financial promotion);

(b) a prominent statement that, if the person has any doubt about the suitability of the agreement which is the subject of the financial promotion, he should contact the firm which has communicated or approved the financial promotion for advice (or an independent financial adviser if the firm does not offer advice);

(c) if the financial promotion is communicated by a firm whose permission includes a requirement that it must not hold client money, the name of the person to whom payment (if any) should be made;

(d) details of the basis or amount of any commission or remuneration which might be payable by the person who is offering the investment or service to another person.
Delete the table "Direct offer financial promotions: particular information required".

Contractual terms and conditions for distance contracts

3.9.7A R (1) A firm must ensure that a retail customer is provided with all the contractual terms and conditions on which its service will be provided in a durable medium in good time before the retail customer is bound to the firm by a distance contract or offer resulting from a direct offer financial promotion, unless an exemption in (2), (3) or (4) applies:

(2) Exemption: means of distance communication

This exemption applies if the contract is concluded at the retail customer’s request using a means of distance communication which does not enable provision of the contractual terms and conditions in a durable medium in accordance with (1). In that case, the firm must provide the retail customer with the information in a durable medium immediately after conclusion of the distance contract.

(3) Exemption: successive or separate operations under an initial service agreement

This exemption applies if the firm has an initial service agreement with the retail customer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see COB 1.10.2G(1)).

(4) Exemption: other successive or separate operations

This exemption applies if:

(a) the firm has no initial service agreement with the retail customer;

(b) the firm has performed an operation with the retail customer within the last year; and

(c) the contract is in relation to a successive operation or separate operation of the same nature (see COB 1.10.2G(2)).

Cash deposit ISAs
3.9.8 R (1) A direct offer financial promotion relating to a cash deposit ISA must contain the information required by COB 6.5.42R (1) to (8) (but see COB 1.11.2R (Exemption for firms which follow the Banking Code Guidance)).

(2) Paragraph (1) does not apply to a bank or building society which subscribes to, and includes in the direct offer financial promotion the information relating to a cash deposit ISA that is suggested in the January 2001 edition of the Banking Code—the "Guidance for subscribers" to the Banking Code issued by the British Bankers’ Association, the Building Societies Association and the Association for Payment Clearing Services.

3.9.10 R A direct offer financial promotion relating to a packaged product must contain the information required by COB 6.5.2R(1), (3) and (5) as applicable (Contents of key features).

Cancellation rights EIS or non-packaged product, ISA or PEP with no right of withdrawal

3.9.21 R (1) A direct offer financial promotion which relates to an investment which is subject to cancellation or withdrawal rights must describe those rights and explain:

(a) The length of the cancellation or withdrawal period, and when it will begin;

(b) Whether cancellation or withdrawal is a legal right or voluntarily conferred;

(e) (if it is the case) that there might be a shortfall, or, if applicable, a significant shortfall, on cancellation.

(2) A direct offer financial promotion which relates to an EIS or non-packaged product, ISA or PEP for which no right to withdraw is given under case 8 of column row 2, COB 6.7.17R, must include the statement required by that provision.

3.9.22 G [deleted] The description ‘significant shortfall’ is appropriate for higher volatility funds where a large proportion of the investment may be lost during the cancellation period.

4.2.1 R This section applies to a firm intending to conduct or conducting designated investment business with or for a specific customer, unless the designated business relates to the type of transaction or firm in
Meaning of ‘private customer’

4.2.2
In this section, COB 4.2, references to a ‘private customer’ include, in relation to the conclusion of a distance contract, a retail customer, and references to ‘customer’ are to be interpreted accordingly. This section does not apply to transactions relating to a cash deposit ISA held on deposit with a deposit-taking firm, since it is not a designated investment.

Authorised professional firms

4.2.3
If an authorised professional firm conducts a non-mainstream regulated activity for a customer (whether with or without any other regulated activity for the customer) then, subject to COB 4.2.8G, the effect of COB 1.2.1R(4) and PROF 5.4 is that:

1. **terms of business** must be provided in accordance with COB 4.2.5R; but
2. with respect to the non-mainstream regulated activity the terms of business should satisfy COB 4.2 as to content if it contains the effect of the disclosure in COB 4.2.15E(26) COB 4 Ann 2E(25); and
3. the Distance Marketing Regulations may apply and require the provision of pre-contractual information in certain circumstances.

Purpose

4.2.4
COB 4.2 amplifies Principle 6 (Customers' interests) and Principle 7 (Communications with clients). These requires a firm to pay due regard to the interests of its customers and to their information needs, to treat them fairly and to communicate information to them which is clear, fair and not misleading. A customer needs to know on what basis a firm intends to do business with him. Terms of business or a client agreement set this out, the basis on which a firm conducts any designated investment business with or for the customer.

Requirement to provide terms of business to a customer

4.2.5
(1) Unless any of the exemptions in COB 4 Ann 1R applies, a customer must, in good time before designated investment business is conducted, be provided with its firm's terms of business, setting out the basis on which the designated investment business is to be conducted within the period specified in (2) or
A firm must, before conducting any designated investment business with or for a specific private customer, provide him with its terms of business, unless the customer has made an oral offer to enter into an investment agreement relating to an ISA, or a stakeholder pension scheme, that relates to a designated investment, in which case the terms of business must be provided to him within five business days of the offer.

If the customer is an intermediate customer, the firm must provide its terms of business within a reasonable period of the firm beginning to conduct designated investment business with or for the customer.

4.2.6 G [deleted] COB 4.2.5R(2) does not require a firm to provide information that, by its nature, is unavailable at the time the terms of business are issued. For example, a firm will not necessarily know a private customer’s investment objectives before providing terms of business, since it may not be possible to determine the private customer’s requirements without undertaking know-your-customer checks, as required by COB 5.2. In these circumstances, the firm should notify the private customer of any relevant information set out in COB 4.2.15E and COB 4.2.16E as soon as practicable after it becomes available.

4.2.6 G (1) Terms of business will be provided in ‘good time’ for the purposes of COB 4.2.5R if provided in sufficient time to enable the customer to consider properly the service or investment on offer before he is bound.

(2) COB 4.2.5R does not require the same information to be provided again if the customer already has it (for example through a direct offer financial promotion).

…

4.2.9 R [deleted] Designated investment business to which the terms of business and client agreement requirements in this section do not apply.

This table belongs to COB 4.2.1R

Delete the table "Designated investment business to which the terms of business and client agreement requirements in this section do not apply".

Contents of terms of business Adequate detail

4.2.10 R A firm must ensure that its terms of business (including a client agreement with a customer) provided in accordance with this section, COB 4.2:

(1) set out in adequate detail the basis on which it will conduct
designated investment business with the customer; and

(2) (in respect of distance contracts with retail customers) include all contractual terms and conditions and the information set out in COB App 1. designated investment business is to be conducted.

4.2.11 E  (1) A firm should, in order to provide adequate detail, include in its terms of business provided to a customer:

(a) a provision about each item set out in COB 4 Ann 2E and COB 4 Ann 3E COB 4.2.15E and COB 4.2.16E, except those the customer has requested not to be included; and

(b) any further or alternative provisions that the customer has asked for and on his own initiative agreed with the firm;

to the extent that each such provision is relevant in the circumstances and that it is practicable to provide it.

(2) Compliance with (1) may be relied on as tending to establish compliance with COB 4.2.10R (1).

(3) Contravention of (1) may be relied on as tending to establish contravention of COB 4.2.10R (1).

Information not available at time of issue of terms of business

4.2.11AR A firm is not required to provide information under COB 4.2.10R that, by its nature, is unavailable at the time the terms of business are issued. In such circumstances, the firm must notify the customer of any relevant information as soon as practicable after it becomes available and, in the case of a distance contract with a retail customer, in good time before the contract is concluded.

4.2.11BG COB 4.2.11AR will apply, for example, where a firm does not know a private customer's investment objectives before providing terms of business, as it cannot determine the private customer's requirements without undertaking know-your-customer checks, as required by COB 5.2.

Terms of business provided in more than one document

4.2.12 R A firm's terms of business provided to a customer may comprise more than one document, provided that it is clear that collectively they constitute the terms of business, and provided the use of several documents does not materially diminish the significance of any information the firm is required to give the customer, or the ease with which this can be understood.

Contents of terms of business: non-mainstream regulated activities of an authorised professional firm
An authorised professional firm should include, in its terms of business, the information in COB 4 Ann 2E (25).

For an authorised professional firm, with respect to its non-mainstream regulated activities and as to the content only of its terms of business:

(a) compliance with (1) may be relied on as tending to establish compliance with COB 4.2.5R; and

(b) contravention of (1) may be relied on as tending to establish contravention with COB 4.2.5R.

Delete in their entirety the tables at COB 4.2.15E and COB 4.2.16E which are replaced by the new Annexes COB 4 Ann 2E and COB 4 Ann 3E.

At the end of COB 4, insert the following new Annexes:
1 Table: Circumstances in which the terms of business requirement in COB 4.2.5R does not apply and conditions for using the exemption (R)

This table belongs to COB 4.2.5R

<table>
<thead>
<tr>
<th>Exempted type of firm or transaction or event:</th>
<th>Conditions for using the exemption:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Voice telephony communications</td>
<td>(a) At the beginning of the telephone conversation, the firm must provide the customer with the name of the firm and (if the call is initiated by or on behalf of the firm) the commercial purpose of the call;</td>
</tr>
<tr>
<td></td>
<td>(b) if the customer gives his explicit consent to receiving only limited information about the terms of business, the firm must in good time before the retail customer is bound by a contract or offer on the telephone, provide the customer with the following information:</td>
</tr>
<tr>
<td></td>
<td>(i) the name of the person in contact with the customer and his link with the firm;</td>
</tr>
<tr>
<td></td>
<td>(ii) a description of the main characteristics of the service;</td>
</tr>
<tr>
<td></td>
<td>(iii) the total price to be paid by the customer to the firm for the services, including all related fees, charges and expenses, and all taxes paid through the firm or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the customer to verify it; and notice of the possibility that other taxes or costs may exist that are not paid through the firm or imposed by it;</td>
</tr>
<tr>
<td>(iv)</td>
<td>the existence or absence of a right to cancel under <em>COB 6.7</em> and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <em>customer</em> may be required to pay in accordance with <em>COB 6.7.52R(1)(b)</em>, as well as the consequences of not exercising it; and</td>
</tr>
<tr>
<td>------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>(v)</td>
<td>that other information is available on request and the nature of that information;</td>
</tr>
<tr>
<td>(c)</td>
<td>if the <em>customer</em> does not give his explicit consent to receiving only the limited information in (b), and the parties wish to proceed by telephone, the <em>firm</em> must in good time before the <em>retail customer</em> is bound by a contract or offer on the telephone, provide all of the information required by <em>COB App 1</em> orally to the <em>customer</em>; and</td>
</tr>
<tr>
<td>(d)</td>
<td>in the case of either (b) or (c), the <em>firm</em> must immediately after conclusion of the contract, send the <em>customer</em> a full <em>terms of business</em>.</td>
</tr>
<tr>
<td>(2)</td>
<td>The service is being provided exclusively by means of distance communication (other than telephone) which does not enable a <em>terms of business</em> to be provided before a contract is concluded</td>
</tr>
<tr>
<td></td>
<td>(a) The service is provided in this way at the <em>customer’s request</em>; and</td>
</tr>
<tr>
<td></td>
<td>(b) the <em>firm</em> must send the <em>terms of business</em> to the <em>customer</em> immediately after conclusion of the contract.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>(3)</td>
<td>The firm has an initial service agreement with the customer</td>
</tr>
<tr>
<td>(4)</td>
<td>The firm has no initial service agreement with the customer but the designated investment business to be conducted is a successive operation or separate operation of the same nature for the customer (see COB 1.10.2G(2))</td>
</tr>
<tr>
<td>(5)</td>
<td>Life insurer</td>
</tr>
</tbody>
</table>
| (6) | Operator of a collective investment scheme | The firm is:  
  (a) conducting any designated business as part of scheme management activity; or  
  (b) providing any service to the trustee or depositary of the scheme which is not part of the operator’s scheme management activity; or  
  (c) selling or purchasing as principal units in a scheme except a sale or purchase of units in an unregulated collective investment scheme under a distance contract with a retail customer. |
<p>| (7) | Trustee or depositary | The firm is acting as a trustee of a unit trust or depositary of an ICVC. |</p>
<table>
<thead>
<tr>
<th></th>
<th><strong>Operator of investment trust savings scheme</strong></th>
<th>The firm is:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(a) bringing about a transaction in the shares of any investment trust that is the subject of the scheme; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) conducting any designated investment business as part of its activities as such (except a distance contract not within (a) with a retail customer).</td>
</tr>
<tr>
<td></td>
<td><strong>Supplier of a published recommendation</strong></td>
<td>The firm is supplying a published recommendation.</td>
</tr>
<tr>
<td></td>
<td><strong>OPS firms who are trustees of an OPS</strong></td>
<td>The firm is carrying on any designated investment business as part of its OPS activity in relation to an occupational pension scheme of which it is trustee.</td>
</tr>
<tr>
<td></td>
<td><strong>Advising during preparation of terms of business</strong></td>
<td>The advice on investments or information is provided solely for the purpose of preparing terms of business or entering into a client agreement.</td>
</tr>
<tr>
<td></td>
<td><strong>Designated investment business performed after termination of terms of business</strong></td>
<td>The firm is acting for the purposes only of fulfilling any obligations still outstanding under the terms of business.</td>
</tr>
</tbody>
</table>
| (13) | **Execution–only transactions** | The *firm* is entering into or bringing about any *execution-only transaction* except:

(a) a transaction in a *contingent liability investment* with or for a *private customer*; or

(b) where the *firm* is entering into a *distance contract* with a *retail customer*, unless the contract:

(i) relates solely to *dealing as agent*, *advising* or *arranging* by the *firm*; and

(ii) is concluded merely as a stage in the provision of another service by the *firm* or another *person* (see COB 1.10.6G). |
| (14) | **Direct offer financial promotion** | The *firm* is concluding a contract with a *customer* as a result of a *direct offer financial promotion* to which COB 3.9 (Direct offer financial promotions) applies. (COB 4.2.5R (Requirement to provide terms of business to a customer) may therefore apply for a contract concluded as a result of a *direct offer financial promotion* communicated to a *person* outside the United Kingdom.) |
| (15) | **The customer is an intermediate customer and not a retail customer** | The *firm* must provide *terms of business* within a reasonable period of the *firm* beginning to conduct business with or for the *customer*. |
COB 4 Annex 2E

Table  Content of terms of business provided to a customer: general requirements

This table belongs to COB 4.2.11E

<p>| (1) | Commencement of the terms of business |
|     | When and how the terms of business are to come into force. |
| (2) | Regulator |
|     | The firm’s statutory status (in accordance with GEN 4 Ann 1R (Statutory Status Disclosure)). |
| (3) | Investment objectives |
|     | The customer’s investment objectives. |
| (4) | Restrictions |
|     | (a) Any restrictions on: |
|     | (i) the types of designated investment in which the customer wishes to invest; and |
|     | (ii) the markets on which the customer wishes transactions to be executed; or |
|     | (b) that there are no such restrictions. |
| (5) | Services |
|     | The services the firm will provide. |
| (6) | Payments for services |
|     | Details of any payment for services payable by the customer to the firm, including where appropriate: |
|     | (a) the basis of calculation; |
|     | (b) how it is to be paid and collected; and |
|     | (c) how frequently it is to be paid; |
|     | whether or not any other payment is receivable by the firm (or to its knowledge by any of its associates) in connection with any transaction executed by the firm, with or for the customer, in addition to or in lieu of any fees. |
| (7) | Investment manager |
|     | If the firm is to act as an investment manager: |
|     | (a) the arrangements for giving instructions to the firm and acknowledging those instructions; |
|     | (b) the initial value of the managed portfolio; |
|     | (c) the initial composition of the managed portfolio; and |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(d)</td>
<td>the period of account for which statements of the portfolio are to be provided in accordance with COB 8.2.4R (Requirement for a periodic statement) (where periodic statements are required).</td>
</tr>
<tr>
<td>(8)</td>
<td>Accounting</td>
</tr>
<tr>
<td></td>
<td>The arrangements for accounting to the customer for any transaction executed on his behalf.</td>
</tr>
<tr>
<td>(9)</td>
<td>Cancellation and withdrawal</td>
</tr>
<tr>
<td>(a)</td>
<td>In the case of a non-packaged product ISA or PEP, an explanation of any right to withdraw (see COB 6.7 (Cancellation and withdrawal)) or, if it is the case, a statement that such rights will not apply.</td>
</tr>
<tr>
<td>(b)</td>
<td>(In the case of ISAs), information about:</td>
</tr>
<tr>
<td>i)</td>
<td>the options available on cancellation;</td>
</tr>
<tr>
<td>ii)</td>
<td>how cancellation will operate in circumstances where the account forms part of, for example, a maxi-ISA which contains other components; and</td>
</tr>
<tr>
<td>iii)</td>
<td>a statement that the effect of cancelling the last component has the effect of cancelling the entire ISA agreement and may also (where it is the case) delay the customer from entering into another ISA agreement until the next tax year.</td>
</tr>
<tr>
<td>(10)</td>
<td>Unsolicited real time financial promotion</td>
</tr>
<tr>
<td></td>
<td>In the case of a private customer, the circumstances, if any, in which the firm or its representative or employees may communicate an unsolicited real time financial promotion to the private customer.</td>
</tr>
<tr>
<td>(11)</td>
<td>Acting as principal</td>
</tr>
<tr>
<td></td>
<td>That the firm may act as principal in a transaction with the customer, if this is the case.</td>
</tr>
<tr>
<td>(12)</td>
<td>Conflict of interest and material interest</td>
</tr>
<tr>
<td></td>
<td>When a material interest or conflict of interest may or does arise, the manner in which the firm will ensure fair treatment of the customer as required by COB 7.1.3R (Fair treatment).</td>
</tr>
<tr>
<td>(13)</td>
<td>Broker fund adviser</td>
</tr>
<tr>
<td></td>
<td>If the firm acts as a broker fund adviser for a private customer, a statement explaining the nature of the firm’s dual role as adviser to the customer and adviser to the life office or operator in question.</td>
</tr>
</tbody>
</table>
Use of soft commission agreements
If the firm is to be authorised under the terms of business to undertake transactions with or through the agency of another person with whom the firm has a soft commission agreement, the prior disclosure required by COB 2.2.16R (Prior disclosure).

Customer’s understanding of risk
When a firm chooses to fulfil its obligations under COB 5.4.3R (Requirement for risk warnings) in the terms of business in relation to any of the following:

(a) warrants or derivatives;
(b) non-readily realisable investments;
(c) penny shares;
(d) securities which may be subject to stabilisation;
(e) stock lending activity;
the relevant risk warning.

Unregulated collective investment scheme
That the services to be provided by the firm will or may include advice on investments relating to, or executing transactions in units in unregulated collective investment schemes, if this is the case.

Underwriting
That the firm may enter into transactions for the customer, either generally or subject to specified limitations, when the customer will incur obligations as an underwriter or sub-underwriter, if this is the case.

Stock lending
In the case of a private customer, that the firm may undertake stock lending activity with or for the private customer (if this is the case), specifying the assets to be lent, the type and value of relevant collateral from the borrower and the method and amount of payment due to the private customer in respect of the lending.

Right to realise a private customer's assets
The information required by COB 7.8.3R (Contractual rights to realise a private customer's assets), if applicable.

Complaints procedure
How to complain to the firm, and a statement, if relevant, that the customer may subsequently complain directly to the Financial Ombudsman Service.
### Compensation
Whether or not compensation may be available from the compensation scheme, should the firm be unable to meet its liabilities, and information about any other applicable named compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained. (See the example in COB 5.5.11G (Investment firms: compensation information)).

### Termination method
How the terms of business may be terminated, including a statement:

| (a) | That termination will be without prejudice to the completion of transactions already initiated, if this is the case; |
| (b) | That the customer may terminate the terms of business by written notice to the firm and when this may take effect; |
| (c) | That if the firm has the right to terminate the terms of business, it may do so by notice given to the customer, and specifying the minimum notice period, if any; and |
| (d) | of any agreed time after which, or any agreed event on which, the terms of business will terminate. |

### Termination consequences
The way in which transactions in progress are to be dealt with upon termination.

### Contracting out of best execution
When the obligation to provide best execution can be and is to be waived, a statement:

| (a) | that the firm does not owe a duty of best execution; or |
| (b) | the circumstances in which it does not owe such a duty. |

### Authorised professional firms
If the firm is an authorised professional firm and may conduct a non-mainstream regulated activity with or for the customer (whether with or without any other regulated activity for the same customer), an explanation, with respect to that activity, of:

| (a) | how to complain to the firm, where the customer may subsequently complain and the mechanisms that operate in respect of such a subsequent complaint; and |
| (b) | what, if any, compensation arrangements are available to the customer if the firm is unable to meet any of its liabilities, or the availability of an explanation describing those arrangements. |
## Managing investments on a discretionary basis

Additional contents in respect of discretionary management

In respect of discretionary management, *terms of business* (including a *client agreement*) provided to a *customer* should, in addition, include some provision about each of:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Extent of discretion</td>
</tr>
<tr>
<td></td>
<td>(a) The extent of the discretion to be exercised by the <em>firm</em>, including any restrictions on:</td>
</tr>
<tr>
<td></td>
<td>(i) the value of any one <em>investment</em>; and</td>
</tr>
<tr>
<td></td>
<td>(ii) the proportion of the portfolio which any one <em>investment</em> or any particular kind of <em>investment</em> may constitute; or</td>
</tr>
<tr>
<td></td>
<td>(b) That there are no such restrictions.</td>
</tr>
<tr>
<td>(2)</td>
<td>Periodic statements</td>
</tr>
<tr>
<td></td>
<td>(a) The frequency of any <em>periodic statements</em>, except when a <em>periodic statement</em> is not required by <em>COB 8.2.7R</em> (Promptness, suitable intervals and adequate information); and</td>
</tr>
<tr>
<td></td>
<td>(b) whether those statements will include some measure of performance, and if so, what the basis of that measurement will be.</td>
</tr>
<tr>
<td>(3)</td>
<td>Valuation</td>
</tr>
<tr>
<td></td>
<td>The basis on which assets comprised in the portfolio are to be valued.</td>
</tr>
<tr>
<td>(4)</td>
<td>Borrowings</td>
</tr>
<tr>
<td></td>
<td>That the <em>firm</em> may commit the <em>customer</em> to supplement the funds in the portfolio, including borrowing on his behalf, if this is the case, and, if it may:</td>
</tr>
<tr>
<td></td>
<td>(a) the circumstances in which the <em>firm</em> may do so;</td>
</tr>
<tr>
<td></td>
<td>(b) whether there are any limits on the extent to which the <em>firm</em> may do so and, if so, what those limits are; and</td>
</tr>
<tr>
<td></td>
<td>(c) any circumstances in which such limits may be exceeded.</td>
</tr>
</tbody>
</table>
(5) **Underwriting commitments**

If it is the case, that the *firm* may commit the *customer* to any obligation to underwrite or sub-underwrite any issue or offer for sale of *securities*, and:

| (a) | whether there are any restrictions on the categories of *securities* which may be underwritten and, if so, what these restrictions are; and |
| (b) | whether there are any financial limits on the extent of the underwriting and, if so, what these limits are. |

...  

5.3.18 R The *firm* must provide the letter required by COB 5.3.14R to the *customer*:

(1) in the case of a *life policy*, *pension contract* or *stakeholder pension scheme* where the *cancellation rules* require notification of the right to cancel, no later than the issue of the post-sale notice of the *customer’s right to cancel* fourteenth day after the contract is concluded; or

...  

ISD investment firms: compensation information

5.5.9 R An *ISD investment firm* providing or offering to provide a *core investment service* or *custody* must make available to every *client*, who has used or intends to use those services, information on whether or not compensation may be available from the *compensation scheme* or a compensation scheme established in another *EEA State* in accordance with the *Investor Compensation Directive* should the *firm* be unable to meet its liabilities, and about any other applicable named compensation scheme; for each applicable scheme, the firm must describe the extent and level of cover and how further information can be obtained.

...  

6 Product disclosure and the customer’s right to cancel or withdraw

6.1 Packaged **Product and ISA disclosure**

6.1.1 R **COB 6.1 to COB 6.5 apply to a firm:**

...  

(6) ...

(e) (where an *open market option* is available under the contract terms) a *pension buy-out contract*; or

(7) which enters into a *distance contract* with a *retail customer to accept deposits*. 

34
6.1.1A R In COB 6.1 to COB 6.5, references to a private customer include, in relation to the conclusion of a distance contract, a retail customer.

...

6.1.3 G COB 6.1 to COB 6.5 amplify Principle 7 (Communications with clients), which requires a firm to pay due regard to the information needs of its customers. In the case of packaged products there is a special need to ensure that private customers are supplied with information which will highlight particular packaged product features. This also needs to be achieved in a way which will optimise the private customer's ability to make a comparative analysis of different packaged products. These rules also address a similar information need in relation to cash deposit ISAs and when a firm enters into a distance contract to accept deposits with a retail customer.

Requirement to produce key features

6.1.4 R ...

(3) A firm must produce key features in printed hard copy format and may in addition produce key features in an electronic format, unless the firm intends to conduct the activities in COB 6.1.1R solely through electronic media, in which case there is no requirement for a printed hard copy.

...

General Medium for provision of key features

6.2.2 R The key features or information which the rules in COB 6.1, COB 6.2 and COB 6.4 require a firm to provide to a private customer must be provided by the firm in a durable medium writing.

...

6.2.4 G Firms are reminded that any key features or other information required by COB 6.4 to COB 6.5 is a form of financial promotion and therefore the financial promotion rules contained in COB 3 apply (subject to the application provisions in COB 3.1 to COB 3.3). The same is true for a document relating to a cash deposit ISA produced by a bank or building society under the Banking Code in place of that required under COB 6.5.42R (see COB 6.4.13R(2)).

...
Where this chapter requires *key features* or other information to be given, it does not require the same information to be provided again if the *private customer* already has it.

When a *firm* sells, *personally recommends* or arranges the sale of a *life policy* to a *private customer*, the *firm* must *provide* the *private customer* must be provided with appropriate *key features* before the *private customer* completes an application for the *policy*, subject to *COB 6.2.9R* (Sales through intermediaries) and *COB 6.4.27R* (telephone sales) unless *COB 6.2.9R(2) applies*.

**Exception for life policies: sales through intermediaries**

*COB 6.2.7R* does not apply when its *life policy* is sold on the *personal recommendation* of, or arranged to be sold by, an *independent intermediary* or *marketing group associate* another person, provided that other person:

1. is a *firm* (or *appointed representative*) operating from an establishment maintained by the firm (or appointed representative) in the United Kingdom; or

2. is operating from an establishment in an *EEA State* whose law imposes an obligation on the *person* to provide information about the *life policy* in accordance with articles 3 and 5(1) and (2) of the *Distance Marketing Directive*.

*COB 6.2.7R* does not apply to a *firm* where the *private customer* is to acquire a *life policy* without making a written application, but the *firm* must instead ensure that it gives an adequate oral explanation of the main features of the *policy*, and must give or send the *private customer* appropriate *key features* within five *business days* of the date on which the sale, recommendation or arrangement was made.

In most cases, *life policies* will be sold through written applications or proposal forms. *COB 6.2.9R(2)* in particular allows personal pensions to be effected or varied quickly at the end of the tax year, when speed might be essential and the transaction is effected by telephone. A 'written' application includes an application by electronic means.

An adequate oral explanation of the information required by *COB 6.2.9R(2)* should include the following:

1. The *policy type, brand name* and *issuing company*;
2. the *policy aims*, the *private customer's commitment* and the *risk factors*;
3. a summary of the reasons for any recommendation;
4. where it is the case, the fact that *commission or remuneration*
will be paid to the adviser or representative; and
(5) that key features will be sent within five business days.

Life policies: pre-completion variations

6.2.12 R (1) Where key features have already been provided by a firm to a private customer in accordance with COB 6.2.7R and the terms for the proposed life policy are subsequently altered before the private customer completes an application form, the firm must ensure that the private customer is provided with revised key features, unless the alteration is one or more of the following:

(a) the amount of the premium is changed;
(b) the amount of any commission or remuneration payable is reduced;
(c) a rider benefit is added, removed or amended.

(2) If (1)(a) to (c) apply, then, subject to COB 6.4.27R (telephone sales), if the contract is to be a distance contract with a retail customer, the retail customer must be provided with details of such changes in a durable medium in good time before the contract is concluded.

6.2.14 R Where key features have already been provided to a private customer by a firm, and the terms of the proposed life policy are materially altered after the private customer completes an application form, the firm must ensure that the private customer must be provided with written details of the change in a durable medium as soon as practicable and offered revised key features.

6.2.15 G What constitutes a ‘material change’ ‘materially altered’ requires consideration of the facts in the circumstances of each case. Changes which lead to an increase in the proposed premium of 25 per cent or less can be regarded as not material and can be ignored, so long as the underlying policy terms and conditions are the same. Other changes to the terms of the proposed contract, such as an increase in the rate or basis of commission, a different charges structure or an extension of the policy term should be regarded as material.

Variations to existing life policies

6.2.16 R When a policyholder applies to vary a life policy issued on or after 1 January 1995 (or is recommended to do so) and the variation of the policy gives rise to a right to cancel under COB 6.7.7R, a document containing at least the policyholder must be provided with:

(1) the information required by COB 6.5.15R to COB 6.5.19R, COB 6.5.23R to COB 6.5.25R, COB 6.5.27R to COB 6.5.28R
and COB 6.5.38R; and

(2) in the case of a variation which results in a new distance contract, all the contractual terms and conditions and the information in COB App 1;

must be provided to the policyholder in a durable medium by the firm personally recommending, arranging or effecting the variation in good time before it is put into effect, unless COB 6.2.19R (sales through intermediaries) or COB 6.4.27R (telephone sales) applies.

6.2.17 G Key features were introduced for new policies sold from 1 January 1995. Firms can meet One way of meeting the requirements of COB 6.2.16R is by providing a complete set of new key features to the policyholder. If a full key features is not provided, then as a minimum the information to be supplied must include the details required by COB 6.5.15R to COB 6.5.19R (An Example), COB 6.5.23R to COB 6.5.25R (Tables), COB 6.5.19R to COB 6.5.28R (Deductions Summary) and COB 6.5.38R (Commission/Remuneration). The illustrative figures in the key features could relate to just the increase in premiums and benefits, or could illustrate a 'before and after' situation.

6.2.18 R When a policyholder applies to vary a policy issued before 1 January 1995 (or is personally recommended to do so) and the variation of the policy gives rise to a right to cancel under COB 6.7.7R, information must be given to the policyholder by the firm that is personally recommending, arranging or effecting the variation before it is put into effect, unless COB 6.2.19R or COB 6.4.27R (telephone sales) applies. The firm must:

(1) believe on reasonable grounds that the information given is sufficient to enable the policyholder to understand the consequences of the variation; and

(2) in the case of a variation which results in a new distance contract, in good time before the variation is put into effect, provide all the contractual terms and conditions and the information in COB App 1.

6.2.19 R (4) COB 6.2.16R and COB 6.2.18R do not apply to a product provider when the variation to its life policy is effected on the personal recommendation of or arranged by an independent intermediary or marketing group associate another person, provided that other person:

(1) is a firm (or appointed representative) operating from an establishment maintained by the firm (or appointed representative) in the United Kingdom; or

(2) is operating from an establishment in an EEA State whose law imposes an obligation on the person to
provide information about the variation to the life policy in accordance with articles 3 and 5(1) and (2) of the Distance Marketing Directive.

(2) COB 6.2.16R and COB 6.2.18R do not apply to a firm where the private customer is to vary a life policy without making a written application, but the firm must instead ensure that it gives an adequate oral explanation of the variation, and must give or send the private customer the information required by whichever of COB 6.2.16R or COB 6.2.18R is applicable within five business days of the variation being effected.

6.2.20 G [deleted] The guidance in COB 6.2.10G and COB 6.2.11G is also relevant to top-ups to existing policies when speed might be essential and the transaction is effected by telephone.

Exception from the requirement to provide key features for life policies: non-UK customers

6.2.21 R (1) There is no requirement for key features to be provided for a new life policy or a variation to an existing policy if, at the time that the private customer signs the application, he is habitually resident:

(a) except for distance contracts with retail customers) in an EEA State other than the United Kingdom; or
1

(b) Outside the EEA and he is not present in the United Kingdom.
2

(2) Paragraph (1)(a) does not apply to a firm acting as an outgoing ECA provider.

Schemes

6.2.22 R When a firm sells, personally recommends or arranges for the sale of a scheme to a private customer: (1) the firm must, unless COB 6.2.24R (exceptions) or COB 6.2.25R or COB 6.4.27R (telephone sales) applies, provide the private customer must be provided with key features for the scheme before the private customer completes an application for the scheme holding.

(2) the firm may delay the provision of key features where a private customer is to acquire the scheme without making a written application, provided that it gives an adequate oral explanation of the main features of the scheme holding to the private customer and the key features are sent to him within five business days of the date on which the sale, recommendation or arrangement was made.

6.2.23 G (1) COB 6.2.22R applies not just to new purchases but also to any recommendation or application to transfer the value of a
particular fund holding within a scheme to a different fund within the same scheme.

(2) Where a private customer has responded to a direct offer financial promotion, the mailing package or direct offer financial promotion should have included example-based key features – there is no requirement to provide a further set of key features to such a private customer in respect of the same transaction.

(3) An adequate oral explanation of the information required by COB 6.2.22R should include the following:

(a) The name of the scheme;
(b) the scheme's aims, the amount to be invested and the risk factors;
(c) the charges that the customer will or may bear and their effect on his investment;
(d) a summary of the reasons for any recommendation;
(e) Where it is the case, that commission or remuneration will be paid to the adviser or representative; and
(f) That key features will be sent within five business days.

Exceptions from the requirement to provide key features for schemes

6.2.24 R A firm need not provide key features to a private customer in respect of a scheme if:

(1) It is a UK firm and the obligation arises from business carried on in another EEA State under an EEA right the firm is a product provider and the scheme holding is sold on the personal recommendation of, or arranged to be sold by another person, provided that other person:

(a) is a firm (or appointed representative) operating from an establishment maintained by the firm (or appointed representative) in the United Kingdom; or

(b) is operating from an establishment in an EEA State whose law imposes obligations on the person to provide information about the scheme holding in accordance with articles 3 and 5(1) and (2) of the Distance Marketing Directive; or

(2) at the time the private customer signs the application, the private customer is habitually resident outside the EEA and is not present in the United Kingdom; or
(3) (except for distance contracts with retail customers) the scheme holding is purchased by a private customer on an execution-only basis; or

(4) the scheme holding is purchased on behalf of a private customer by an investment manager exercising discretion; or

(5) the sale of the scheme holding is arranged or recommended by an investment manager who is not exercising discretion and the private customer has agreed, either in relation to that specific holding or generally, that key features need not be provided; or

(6) a private customer is making a purchase of a scheme holding in a fund in which he already has a scheme holding and has already been provided with appropriate key features covering the purchase:

(a) where the terms and conditions, including all charges, are the same as applied at the time of the previous purchase of a scheme holding in that fund; and

(b) key features outlining those terms and conditions were issued to the private customer in respect of that previous purchase; or

(7) a private customer is transferring from accumulation units to income units of the same scheme (or vice versa) and has already been supplied with key features for that scheme, which cover the transfer; or

(8) the scheme is a UCITS scheme recognised under section 264 of the Act (Schemes constituted in other EEA States); however, if the sale is by way of a distance contract, the firm must provide all the contractual terms and conditions and the information in COB App 1 instead of key features.

6.2.24A [deleted] When a firm sells, personally recommends or arranges for the sale of a UCITS scheme recognised under section 264 of the Act (Schemes constituted in other EEA States), then COB 6.2.22R does not apply.

6.2.25 [deleted] COB 6.2.22R does not apply to a product provider when the scheme holding is sold on the personal recommendation of, or arranged to be sold by, an independent intermediary or marketing group associate.

…

6.3.5 R The post-sale confirmation required by COB 6.3.3R must be sent or given to the private customer no later than the issue of any post-sale notice under the cancellation rules or, if no such notice is required, as
soon as reasonably practicable after the contract is effected.

6.4.1 R  *COB 6.4* applies to a *firm* in accordance with *COB 6.1.1R*, in respect of occupational *pension schemes*, self invested personal pensions, *income withdrawals*, cash deposit *ISAs*, traded life policies, and *stakeholder pension schemes*, *packaged products* and other deposits.

6.4.2 G  *Firms* are reminded that, under *COB 6.2.2R*, the *key features* required to be provided to a *private customer* under *COB 6.4* must be provided by the firm in a *durable medium* writing. See also *COB 6.2.3G* to *COB 6.2.5G*.

6.4.7 G  *Investments* within a self-invested *personal pension scheme* (a “SIPP”) are effected by the trustees on behalf of scheme members. *Key features* should be given to the trustees and to members of SIPPs when *packaged products* (whether *life policies* or schemes) are recommended by a *firm* to scheme members or effected by SIPP trustees. *Notice of the right to cancel* Cancellation notices should also be copied to SIPP members in these circumstances, in accordance with *COB 6.7.31R*.

**Income withdrawals**

6.4.8 R  When a *firm personally recommends*, arranges or effects *income withdrawals* to or for a *private customer*, the *firm customer* must be provided with *key features* to the customer in good time before the customer signs any form of application or authority electing to make those withdrawals, whether that election is made with *advice on investments* or on an execution-only basis, unless *COB 6.4.10R* to *COB 6.4.12R* apply.

**Cash deposit ISAs**

6.4.13 R  (1) When a *firm that manages, personally recommends* or sells a *cash deposit ISA* to a *private customer*, must ensure, in relation to that cash deposit ISA, that the *private customer* must be provided with the information specified in *COB 6.5.42R* instead of *key features* in good time before the *customer* is bound by the transaction is entered into, unless *COB 6.4.27R* (telephone sales) applies (but see *COB 1.11.2R* (Exemption for firms which follow the Banking Code Guidance)).

(2) Paragraph (1) does not apply to a *firm* if it is a *bank or building society* which subscribes to the Banking Code issued by the British Bankers’ Association, the Building Societies Association and the Association for Payment Clearing Services.

**Traded life policies**
When a firm personally recommends that a private customer should purchase a traded life policy, the customer need not be provided with key features, if the firm instead supplies the information outlined in COB 6.5.44R writing to the private customer in good time before the customer is asked to complete any form of application or authority giving effect to the purchase of the traded life policy.

COB 6.4.15R does not apply to a stakeholder pension scheme operator when its stakeholder pension scheme is sold on the personal recommendation of, or arranged to be sold by, another firm person, provided that other person:

(1) is a firm (or an appointed representative) operating from an establishment maintained by the firm (or appointed representative) in the United Kingdom; or

(2) is operating from an establishment in an EEA State whose law imposes an obligation on the person to provide information about the stakeholder pension scheme in accordance with articles 3 and 5(1) and (2) of the Distance Marketing Directive.

In COB 6.2 to COB 6.5, for the purposes of (1), the firm must treat trustees and managers operators as private customers.

A written notice required by COB 6.4.21R must be provided by the firm no later than 8 business days after the cancellation period commences the issue of the post-sale notice of the private customer's right to cancel under the cancellation rules.

Entering into a distance contract for accepting deposits

(1) A retail customer must be provided with all the contractual terms and conditions and the information in COB App 1 in a durable medium in good time before he is bound by a distance contract or offer under which the firm will accept deposits, unless an exemption in (2), (3), (4) or (5) applies.

(2) Exemption: telephone sales

The exemption in COB 6.4.27R applies in the case of voice telephony communications (references to a 'customer' in that rule should be read as references to a 'retail customer').
(3) **Exemption: certain other means of distance communication**

This exemption applies, if the contract is concluded at the *retail customer*'s request using a *means of distance communication* (other than telephone) which does not enable provision of the contractual terms and conditions and the information in accordance with (1). In that case, the *firm* must provide it to the *retail customer* in a *durable medium* immediately after the conclusion of the *distance contract*.

(4) **Exemption: successive or separate operations under an initial service agreement**

This exemption applies if the *firm* has an initial service agreement with the *retail customer* and the contract is in relation to a successive operation or a separate operation of the same nature under that agreement (see *COB 1.10.2G (1)*).

(5) **Exemption: other successive or separate operations**

This exemption applies if:

(a) the *firm* has no initial service agreement with the *retail customer*;

(b) the *firm* has performed an operation with the *retail customer* within the last year; and

(c) the contract is in relation to a successive operation or separate operation of the same nature (see *COB 1.10.2G (2)*).

6.4.26 G There is a further exemption for those *firms* which subscribe to the Banking Code Guidance (see *COB 1.11.2R*).
Provision of key features or other information in relation to a telephone call

6.4.27 R (1) Where this chapter requires key features or other information to be provided, in the case of voice telephony communications, a firm:

(a) must provide the customer at the beginning of the telephone conversation with the name of the firm and (if the call is initiated by the firm) the commercial purpose of the call; and

(b) provided the customer gives his explicit consent to receiving only limited information, may proceed on the basis of the following oral information only:

(i) the name of the person in contact with the customer and his link with the firm;

(ii) a description of the main characteristics of the service;

(iii) the total price to be paid by the customer to the firm for the service, including all related fees, charges and expenses, and all taxes paid through the firm together with a statement, where relevant, that commission or remuneration will be paid to the adviser or representative, or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the customer to verify it;

(iv) where relevant, notice of the possibility that other taxes or costs may exist that are not paid through the firm or imposed by it;

(v) the existence or absence of a right to cancel the service under COB 6.7 and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the customer may be required to pay if the contract is terminated early or unilaterally under its terms, as well as the consequences of not exercising it; and

(vi) that other information is available on request, and the nature of that information.

(2) If the customer does not give his explicit consent to receiving only the limited information in (1)(b), and the parties wish to proceed by telephone, the firm must prior to the conclusion of the contract provide all of the information required by COB App 1 orally to the customer.
(3) In the case of either (1) or (2), the firm must send the private customer immediately after the contract is concluded, the required key features or other information (as applicable) in a durable medium.

(4) If the service relates to a tax-exempt policy issued by a friendly society, the firm may send an abbreviated key features in accordance with COB 6.5.43R (Friendly Society tax-exempt policies).

6.4.28 G Firms are reminded of the requirements in COB 3.8.21G (Real time financial promotions) and COB 3.10 (Unsolicited real time financial promotions) in relation to telephone calls that may fall within the definition of a financial promotion.

General

6.5.2 R A firm must ensure, unless COB 6.5.3R applies, that:

(4) ...; and

... and

(5) ...

(6) all key features it produces in relation to a distance contract with a retail customer include all the contractual terms and conditions and the information in COB App 1 except to the extent that they are separately provided to the retail customer in a durable medium at the same time.

6.5.3 R A firm may adapt the prescribed content and format requirements in COB 6.5 only when it can demonstrate that this is necessary to reflect the terms and nature of a particular product and that, in relation to a distance contract with a retail customer, in doing so it does not omit the contractual terms and conditions and information in COB App 1.

Information requirements for cash deposit ISAs, friendly Society tax-exempt policies, traded life policies and broker funds

6.5.41 G COB 6.5.42R does not apply to a cash deposit ISA offered by a bank or building society which subscribes to the Banking Code Guidance (see COB 1.11.2R 6.4.13R(2)).

6.5.42 R If COB 6.4.13R(1) applies, for a cash deposit ISA, the private customer must be given the following minimum information (in accordance with COB 6.4.13R) and, in relation to a distance contract with a retail customer, all the contractual terms and conditions and the information in COB App 1 in place of key features:

...
the arrangements for the application of the right to cancel, including the following:

(a) the options available on cancellation (a firm must either assist the private customer in switching accounts or refund all monies deposited together with interest);

(b) information about how cancellation will operate in circumstances where the account forms part of a maxi-ISA which contains other components;

(c) a statement that the effect of cancelling the last component has the effect of cancelling the entire ISA agreement and may also (where it is the case) delay the customer from entering into another ISA agreement until the next tax year; and

(d) a statement that a private customer who exercises a right to cancel will not incur any additional charges or be affected by any notice period;

Friendly Society tax exempt policies

6.5.43 R Where a private customer buys a tax-exempt policy issued by a friendly society, or agrees to make additional contributions to such a policy, the firm may, where there is a right to cancel under COB 6.7 (Cancellation and withdrawal), issue an abbreviated form of key features containing only the following details of and, in relation to a distance contract with a retail customer, all the contractual terms and conditions and the information required under COB App 1:

Traded life policies

6.5.44 R When personally recommending the purchase of a traded life policy, a firm may provide a private customer with the information in at COB 6.5.49R and, in relation to a distance contract with a retail customer, all the contractual terms and conditions and the information in COB App 1 in place of key features (in accordance with COB 6.4.14R).

6.7.1 R COB 6.7 applies to:

(5) the operator of a stakeholder pension scheme;
(6) a firm which enters into distance contracts with retail customers, the making or performance of which constitutes, or is part of:

(a) dealing as agent, advising or arranging in relation to designated investments, unless the distance contract is concluded merely as a stage in the provision of another service by the firm or another person (see COB 1.10.6G);

(b) any other designated investment business; or

(c) accepting deposits;

but not including a distance contract entered into by an appointed representative as principal.

6.7.2 G The firms in COB 6.7.1R (except those in COB 6.7.1R(3)) are product providers, insurers, deposit-taking firms or stakeholder pension scheme operators, that is, the firms responsible for issuing life policies, selling units, issuing long-term insurance contracts, accepting deposits for ISAs, or acting as operators of stakeholder pension schemes.

COB 6.7 (Cancellation and withdrawal) does not act to cancel distance contracts entered into by an appointed representative as principal to provide intermediation services to a retail customer. Regulations 8 (Right to cancel) to 12 (Payment for services provided before cancellation) of the Distance Marketing Regulations may apply instead (see regulation 4(5)).

6.7.3 G [deleted] (1) COB 6.7 specifies the rights which customers have either to cancel agreements into which they have entered, or to withdraw any offer before an agreement has commenced.

(2) COB 6.7.12R specifies those agreements for a stakeholder pension scheme which customers have a right to cancel.

(3) COB 6.7.14R(1) specifies those agreements for an EIS, ISA or PEP from which customers have a right to withdraw.

(4) COB 6.7.15R specifies those long-term insurance contracts which customers have a right to cancel and those which they do not.

(5) A firm has the option to replace a post-sale right to cancel certain pension annuities referred to as "cancellation substitute" (see COB 6.7.14R(2)). This option is also available for pension transfers. If a firm chooses not to offer the cancellation substitute, it has to offer cancellation. The cancellation substitute is available as it is very difficult for post-sale cancellation to work effectively in the case of pension
transfers, because of the difficulty of putting the customer back in his original position.

(6) COB 6.7.17R specifies those non-life agreements for a pension contract, appropriate personal pension or units in an AUT or ICVC which customers have a right to cancel and those which they do not. It also allows firms, for units within an ISA or PEP, to replace cancellation with a pre-sale right to withdraw.

(7) COB 6.7.20R specifies the cancellation procedure which applies to cash deposit ISAs.

(8) COB 6.7.23R specifies certain variations to existing agreements which customers have a right to cancel or right to withdraw.

(9) COB 6.7.54R to COB 6.7.58R contain rules and guidance on investment agreements subject to shortfall and describe how to calculate shortfall.

6.7.4 G COB 6.7.5G summarises the applicable cancellation and withdrawal rights and the maximum period of reflection. Firms should have regard to the detailed rules and guidance in all cases, particularly for the detailed exemptions.

6.7.5 G Cancellable investment agreements.

This table belongs to COB 6.7.4G

Delete the existing table and replace with the following:

<table>
<thead>
<tr>
<th>Cancellable investment agreements</th>
<th>Post-sale right to cancel?</th>
<th>Pre-sale right to withdraw?</th>
<th>Maximum period of reflection (but see COB 6.7.11R)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Contracts where the right arises regardless of means of sale.</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Appropriate personal pension (APP)</strong></td>
<td>Yes</td>
<td>No</td>
<td>30 days</td>
</tr>
<tr>
<td><strong>Cash deposit ISA</strong></td>
<td>Yes</td>
<td>No</td>
<td>14 days</td>
</tr>
<tr>
<td><strong>Life policy</strong> (including pension policy, pension annuity or within ISA)</td>
<td>Yes^1,5,6</td>
<td>No^1</td>
<td>30 days^2</td>
</tr>
</tbody>
</table>

^1: Exception to customers who have an appropriate personal pension (APP) and 30 days will apply.

^2: Exception to customers who have an appropriate personal pension (APP) and 30 days will apply.

^5: Exception to customers who have an appropriate personal pension (APP) and 30 days will apply.

^6: Exception to customers who have an appropriate personal pension (APP) and 30 days will apply.
<table>
<thead>
<tr>
<th>Cancellable investment agreements</th>
<th>Yes 1</th>
<th>No 1</th>
<th>30 days&lt;sup&gt;2&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal pension contract</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Stakeholder pension scheme (SHP)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Certain variations of existing life policies, pension contracts and SHPs</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B. Contracts where the right arises only if advice is given or if sold by distance contract.</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Units in an AUT, recognised scheme or ICVC (within an ISA or PEP)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) if sold by distance contract;</td>
<td>No</td>
<td>No</td>
<td>14 days</td>
</tr>
<tr>
<td>(2) if sold otherwise with advice</td>
<td>Yes 4</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td><strong>ISA or PEP not mentioned in any other row</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) if sold by distance contract</td>
<td>Yes 5,6</td>
<td>No</td>
<td>14 days</td>
</tr>
<tr>
<td>(2) if sold otherwise with advice</td>
<td>No</td>
<td>Yes 3</td>
<td>7 days</td>
</tr>
<tr>
<td><strong>Units in an AUT, recognised scheme or ICVC (outside an ISA or PEP)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) if sold by distance contract</td>
<td>No</td>
<td>No</td>
<td>14 days</td>
</tr>
<tr>
<td>(2) if sold otherwise with advice</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td><strong>EIS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) if sold by distance contract</td>
<td>Yes 5,6</td>
<td>No</td>
<td>14 days</td>
</tr>
<tr>
<td>(2) if sold otherwise with advice</td>
<td>No</td>
<td>Yes 3</td>
<td>7 days</td>
</tr>
<tr>
<td><strong>C. Contracts where the right arises for distance contracts only</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Distance contract to accept deposits</strong></td>
<td>Yes 5,6</td>
<td>No</td>
<td>14 days</td>
</tr>
</tbody>
</table>
### Cancellable investment agreements

<table>
<thead>
<tr>
<th>Distance contract not mentioned in another row the making or performance of which constitutes, or is part of, designated investment business</th>
<th>Yes(^{5,6,7})</th>
<th>No</th>
<th>14 days</th>
</tr>
</thead>
</table>

#### Notes:

1. For a *pension annuity* or *pension transfer* (and a relevant variation), the firm can, in certain circumstances, choose to operate a pre-sale right to withdraw in COB 6.7.19R instead of a post-sale right to cancel (see COB 6.7.14R(2)). A firm may offer a pre-sale right to withdraw, even where there is no right to cancel.

2. The period is at least 14 days if the option of pre-sale withdrawal is offered.

3. There is no right to withdraw for a second or subsequent *EIS* or *ISA*, or (for an *EIS* or *non-packaged product ISA* or *PEP*) where the firm has previously disclosed to the *customer* that no such rights will apply.

4. For *units* in an *AUT*, *recognised scheme* or *ICVC* (within an *ISA* or *PEP*), the firm can choose to offer a seven-day pre-sale right to withdraw rather than a post-sale right to cancel (see COB 6.7.14R(1)). There is no right to cancel or withdraw for a second or subsequent *ISA*.

5. There is no post-sale right to cancel for a *distance contract* where the price depends on fluctuations in the financial market place outside the firm’s control which may occur during the cancellation period.

6. There is no post-sale right to cancel for a *distance contract*:
   
   (a) where the performance of the *distance contract* has been fully completed by both parties at the *customer’s* express request before the *customer* exercises his right to cancel; or
   
   (b) where the *firm* has an initial service agreement with the *customer* and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see COB 1.10.2G).

7. For a *distance contract* to give advice, arrange deals, or deal as agent see COB 1.10.6G (Distance contracts for intermediation services).

---

### Post-sale right to cancel

6.7.7 A **retail customer**, who is an individual, has a right to cancel:

1. a contract on an investment agreement specified in column row 1 of COB 6.7.15R or COB 6.7.17R, unless the right to cancel is disapplied or replaced by anything in column row 2 of COB 6.7.15R or COB 6.7.17R;

2. a contract on an investment agreement for a *stakeholder pension scheme* for which a right to cancel applies under COB 6.7.12R;
a contract an investment agreement for a cash deposit ISA in accordance with COB 6.7.20R (but see COB 1.11.2R (Exemption for firms which follow the Banking Code Guidance));

(4) a variation of a life policy, pension contract or stakeholder pension scheme for which a right to cancel applies under COB 6.7.23R.

6.7.8 R The trustees of an occupational pension scheme or the trustees and managers of a stakeholder pension scheme must be treated so far as necessary as an individual retail customer for the purposes of the cancellation rules, and acquire the same right to cancel as an individual retail customer.

6.7.9 G (1) …

(2) A product provider or operator of a stakeholder pension scheme (see COB 6.7.2G) may be unsure whether any of the situations in column row 2 of COB 6.7.17R applies to the agreement contract in question. In such circumstances the product provider or operator of a stakeholder pension scheme may find it convenient to contract with an intermediary for the provision of documentary evidence needed to confirm the status of customers. However, the responsibility for ensuring compliance with the cancellation rules remains with the product provider or operator of a stakeholder pension scheme.

Cancellation period

6.7.10 R When a retail customer has a right to cancel under COB 6.7.7R(1), (2) or (4), that right must (unless COB 6.7.11R applies) be exercised:

(1) (in the case of a life policy, personal pension policy, personal pension contract or stakeholder pension scheme) within the shorter of:

(a) 30 days; or

(b) the period (of 14 days or more) specified by the firm;

from the date when the customer received a post-sale notice from the firm.

(2) (in any other case) within 14 days from the date when the customer received a post-sale notice from the firm.

6.7.10A R The cancellation period begins on:

(1) (other than for distance contracts and cash deposit ISAs) the date the customer receives the reminder notice of his right to
cancel in accordance with COB 6.7.30R:

(2) (for distance contracts and cash deposit ISAs the later of:

(a) (for a life policy) the day the retail customer is informed that the contract has been concluded; or

(b) (for any other contract) the day of the conclusion of the contract; or

(c) the day on which the retail customer receives the contractual terms and conditions and other information required by COB 3.9, 4.2 or 6, as applicable.

6.7.11 R Where the terms of the firm's contract give the retail customer a longer period to cancel (that is, in excess of the 14 or 30 days specified), the firm must disclose in the information about the right to cancel post-sale notice the differences between the retail customer's rights under COB 6.7.10R and the terms of the contract, which operate independently.

Right to cancel a stakeholder pension scheme

6.7.12 R (1) A retail customer, who is an individual, and who has entered into an investment agreement contract for a stakeholder pension scheme has a right to cancel.

(2) When the retail customer has entered into an investment agreement contract for a stakeholder pension scheme involving recurring contributions to that stakeholder pension scheme, only the first contribution will attract a right to cancel provided that:

(a) the intention or option to make regular contributions has been disclosed in advance of the retail customer entering into the investment agreement; and

(b) the retail customer's intention to make regular contributions is evidenced.

6.7.13 G For the purposes of COB 6.7.12R(2)(a), disclosure of the option to make regular contributions may, for example, take place in the key features. For the purposes of COB 6.7.12R(2)(b), an individual retail customer's intention to make regular contributions could, for example, be demonstrated by the establishment of a direct debit mandate or instructions to an employer to deduct regular contributions from salary.

Pre-sale rRight to withdraw
6.7.14 R  A retail customer, who is an individual, has a right to withdraw an offer to enter into:

(1) (unless a right to cancel is offered for an ISA or PEP under COB 6.7.7R(3), COB 6.7.15R or COB 6.7.17R or COB 6.7.20R and subject to cases 8 and 9 of column row 2 COB 6.7.17R) an EIS, ISA or PEP, following advice on investments; the right to withdraw procedures are that the offer made by the customer to enter into the agreement contract cannot be accepted by the firm until at least seven days after the offer is made; or

(2) a pension annuity or a pension transfer (or a relevant variation), if a right to cancel has been replaced by a right to withdraw under case 4(a) or 7(a) of column row 2, COB 6.7.15R, case 12 of column row 2, COB 6.7.17R, COB 6.7.23R (3), or COB 6.7.26AR (2); the right to withdraw procedures are set out in COB 6.7.19R.

6.7.15 R  Cancellable investment agreements contracts and exceptions – life

This table belongs to COB 6.7.7R(1).

Delete the existing table and replace with the following (in this table, the existing columns (1) and (2) have been changed to rows (1) and (2). This change is not indicated but, otherwise, changes are indicated by using underlining and striking-through in the usual way):

<table>
<thead>
<tr>
<th>Cancellable investment agreements contracts and exceptions – life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment agreements for a Long-term insurance contracts for which an individual a retail customer has a right to cancel under COB 6.7.7R(1) (subject to row 2):</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Row 1</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Life policy (whether or not held within an ISA – see notes 1, 2 and 3 in COB 6.7.16R) (see COB 6.7.23R regarding variation of an existing life policy):</td>
<td></td>
</tr>
<tr>
<td>B. Appropriate personal pension which is a pension policy:</td>
<td></td>
</tr>
<tr>
<td>C. Pure protection contract.</td>
<td></td>
</tr>
</tbody>
</table>
Cancellable investment agreements contracts and exceptions – life

Investment agreements for a Long-term insurance contracts for which an individual a retail customer has a right to cancel under COB 6.7.7R(1) (subject to row 2): Row 2

There is no right to cancel where any one or more of the following cases applies:

1. Pension fund management policy (but see note 5 in COB 6.7.16R);

2. Life policy that relates to or is associated with securing benefits under a defined benefits pension scheme (but see note 5 in COB 6.7.16R);

3. Any life policy for a term of six months or less (unless note 3 in COB 6.7.16R applies) (see also note 5 in COB 6.7.16R);

4. Pension policy or stakeholder pension scheme funded (wholly or in part) from payments derived from:
   (a) a pension transfer, for which the right to cancel is replaced by the right to withdraw (see COB 6.7.14R(2)), using the cancellation substitute in COB 6.7.19R; or
   (b) compensation or redress paid by a firm following a review undertaken in relation to a complaint;

5. Traded life policy;

6. Life policy effected by the trustees of an occupational pension scheme or the employer, or the manager or trustees of a stakeholder pension scheme that represents a:
   (a) pension buy-out contract; or
   (b) purchase of a without-profits deferred pension annuity; or
   (c) defined benefits pension scheme or a single premium payment to any occupational pension scheme with a pooled fund (that is, underlying investments are not earmarked for individual scheme members); or
   (d) purchase made to insure and secure members' pension benefits under a money-purchase occupational scheme or stakeholder pension scheme (unless it is the master, first or only policy);

7. Pension annuity that is:
   (a) due to commence within a year and a day of the contract, for which the right to cancel is replaced by the right to withdraw (see COB 6.7.14R(2)), using the cancellation substitute in COB 6.7.19R; or
<table>
<thead>
<tr>
<th>6.7.16 R</th>
<th>Notes to cancellable investment agreements contracts and exceptions – life</th>
</tr>
</thead>
<tbody>
<tr>
<td>This table belongs to COB 6.7.15R</td>
<td></td>
</tr>
</tbody>
</table>
Notes to COB 6.7.15R:

1. Recurring single *premium life policy*: Under certain conditions, only the first *premium* in what might be a series of *premiums* (for example, in the case of a *mini-ISA insurance component*) attracts cancellation rights under COB 6.7.7R(1). The conditions are:
   
   (a) the option to make a series of single *premium payments* is disclosed at outset (for example, in the *key features*); and
   (b) the intention is evidenced (for example, by the *retail customer* establishing a direct-debit mandate).

2. Multiple contracts: Where a *retail customer* enters into a set of *contracts* investment agreements at the same time (for example, the different components held within a *maxi-ISA*) and with the same *firm* (or another *person* in the same *marketing group* as that *firm*), and that set is being purchased to fulfil one investment objective of the *retail customer*, the *firm* may treat the multiple agreements contracts as being one *agreement contract* for the purposes of COB 6.7. But if it does so, the *firm* must ensure that the *customer* retains a right to cancel each contract investment agreement separately. See also COB 6.7.37R in relation to a *maxi-ISA*. This note applies also to a group of *contracts of insurance*, for example, *term assurance* contracts which have been established as part of a specific marketing arrangement. Such an arrangement may not have an investment objective.

3. A purchaser of a single *premium pension policy* has a right to cancel where the designated retirement date is within six months of the date of the *policy*, unless the *policy* falls within case 1, 4 or 7(b) of column row 2.

4. For a *customer*, other than an *EEA ECA recipient*, *habitually resident* in an *EEA State* other than the *United Kingdom*, *firms* are reminded that they may need to apply cancellation in accordance with the requirements in that *EEA State*.

5. This exemption from giving a right to cancel does not apply for *distance contracts*.

6.7.17   R  Cancellable investment agreements contracts and exceptions – non-life

This table belongs to COB 6.7.7R (1) and COB 6.7.14R (1)

Delete the existing table and replace with the following (in this table, the existing columns (1) and (2) have been changed to rows (1) and (2). This change is not indicated but, otherwise, changes are indicated by using underlining and striking-through in the usual way):
Cancellable investment agreements contracts and exceptions – non-life

Investment agreements Contracts for which an individual a retail customer has a right to cancel under COB 6.7.7R(1) (subject to column row 2):

Row 1

A. Pension contract (see notes 1, 2 and 4 in COB 6.7.18R)

B. Appropriate personal pension which is a pension contract (see note 4 in COB 6.7.18R)

C. Subscriptions (but see notes 1, 2 and 5 in COB 6.7.18R) which can be invested only in units (whether or not held within an ISA, PEP or pension contract) in an AUT, recognised scheme or ICVC purchased from:
   (a) the operator; or
   (b) its marketing group associate acting as an ISA manager or plan manager.

D. Distance contracts (other than for a life policy, stakeholder pension scheme, cash deposit ISA or a contract in A, B or C) the making or performance of which by the firm constitutes or is part of:
   (a) dealing as agent, advising or arranging in relation to designated investments, unless the distance contract is concluded merely as a stage in the provision of another service by the firm or another person (see COB 1.10.6G); or
   (b) any other designated investment business; or
   (c) accepting deposits.

Row 2

There is no right to cancel where any one or more of the following cases applies:

1. The customer is not a private customer (but see note 5 in COB 6.7.18R)

2. The agreement contract is entered into with the firm (and where relevant with any independent intermediary) as an execution-only transaction (unless note 4 or note 5 in COB 6.7.18R applies)

3. The agreement contract is entered into through a direct offer financial promotion (unless note 4 or note 5 in COB 6.7.18R applies)

4. The agreement contract represents an exchange of units between sub-funds.
<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>The agreement contract represents a defined benefits pension scheme (but see note 5 in COB 6.7.18R).</td>
</tr>
<tr>
<td>6.</td>
<td>The agreement contract is entered into under a customer agreement or during negotiations (which are not ISA or PEP related) intended to lead to a client agreement (unless note 4 or note 5 in COB 6.7.18R applies).</td>
</tr>
<tr>
<td>7.</td>
<td>The agreement contract relates to an ISA or PEP for which the right to cancel is replaced by the right to withdraw (but see COB 6.7.14R(1) and note 5 in COB 6.7.18R).</td>
</tr>
<tr>
<td>8.</td>
<td>The agreement contract relates to an EIS or non-packaged product ISA or PEP and is entered into, following advice on investments, and following an explanation that neither of the rights specified in case 7 will apply, given to the customer in accordance with COB 3.9.21R(2) (Direct offer financial promotions: Cancellation rights) or COB 4 Ann 2E(9)(a) 4.2.15E(10) (Terms of business and client agreements with customers) in a direct offer financial promotion, terms of business, or given in EIS particulars, that neither of the rights specified in case 7 will apply (but see note 5 in COB 6.7.18R).</td>
</tr>
<tr>
<td>9.</td>
<td>The agreement contract entered into is a second or subsequent ISA (or EIS) on substantially the same terms (see note 3 in COB 6.7.18R) as an ISA (or EIS) purchased from the same ISA manager (or EIS manager) in the previous tax year (but see note 5 in COB 6.7.18R).</td>
</tr>
<tr>
<td>10.</td>
<td>The agreement contract relates to a change from accumulation units to income units or vice versa, in the same scheme.</td>
</tr>
<tr>
<td>11.</td>
<td>Pension contract funded (wholly or in part) from payments derived from compensation or redress paid by a firm following a review undertaken in relation to a complaint.</td>
</tr>
<tr>
<td>12.</td>
<td>Pension contract or stakeholder pension scheme funded (wholly or in part) from payments derived from a pension transfer for which a right to cancel is replaced by a right to withdraw (see COB 6.7.14R(2)R) using the cancellation substitute in COB 6.7.19R.</td>
</tr>
<tr>
<td>13.</td>
<td>The agreement contract relates to a recognised scheme and is with an operator who is not:</td>
</tr>
</tbody>
</table>
Cancellable investment agreements contracts and exceptions – non-life

Investment agreements Contracts for which an individual a retail customer has a right to cancel under COB 6.7.7R(1) (subject to column row 2):

(a) an authorised person; or
(b) carrying on business in the United Kingdom;

14. The agreement contract relates or would relate to exported products, that is to say:

(a) where the customer is not habitually resident in the United Kingdom (or, for a distance contract, EEA) at the date of the offer of the agreement contract; or

(b) the firm has reasonable grounds for assuming that no advice on investments about the agreement contract was provided by anyone carrying on designated investment business in the United Kingdom (but see note 5 in COB 6.7.18R);

15. for distance contracts:

(a) the price depends on fluctuations in the financial market outside the firm’s control which may occur during the cancellation period, such as contracts related to:

(i) foreign exchange; or
(ii) money market instruments; or
(iii) transferable securities; or
(iv) units in collective investment undertakings; or
(v) financial-futures contracts, including equivalent cash-settled instruments; or
(vi) forward interest-rate agreements; or
(vii) interest-rate, currency and equity swaps; or
(viii) options to acquire or dispose of any instruments in (i) to (vii), including cash-settled instruments and options on currency and on interest rates; or

(b) the performance of the distance contract has been fully completed by both parties at the customer’s express request before the customer exercises his right to cancel; or

(c) the firm has an initial service agreement with the customer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see COB 1.10.2G).
6.7.18  R  Notes to cancellable investment agreements contracts and exceptions
- non-life

This table belongs to COB 6.7.17R

<table>
<thead>
<tr>
<th>Notes to COB 6.7.17R:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Recurring single payment pension contracts and unit savings plans. Under certain conditions, only the first payment in what might be a series of payments attracts cancellation rights under COB 6.7.7R (1). The conditions are:</td>
</tr>
<tr>
<td>(a) the intention or option to make a series of single payments is disclosed at outset (for example, in the key features); and</td>
</tr>
<tr>
<td>(b) the intention is evidenced (for example, by the customer establishing a direct debit mandate).</td>
</tr>
<tr>
<td>2. Multiple agreements contracts. Where a customer enters into a set of investment agreements contracts at the same time (for example, regarding different components held within a maxi-ISA) and with the same firm (or another person in the same marketing group as that firm) and that set is being purchased to fulfil one investment objective of the customer, the firm may treat the agreements contracts as being one agreement contract for the purposes of COB 6.7. But if it does so, the firm must ensure that the customer has a right to cancel each contract investment agreement separately (see also COB 6.7.37R in relation to maxi-ISA).</td>
</tr>
<tr>
<td>3. For example, mini- to mini-ISA or maxi- to maxi-ISA would be regarded in this context as ‘on substantially the same terms’.</td>
</tr>
<tr>
<td>4. A customer has a right to cancel an appropriate personal pension or pension contract at the outset and on any subsequent agreement-for a variation of a pension contract (see COB 6.7.23R regarding variation of an existing contract).</td>
</tr>
<tr>
<td>5. This exemption from giving a right to cancel does not apply for distance contracts.</td>
</tr>
</tbody>
</table>

6.7.19  R  Cancellation substitute

This table belongs to COB 6.7.14R(2), cases 4(a) and 7(a) of column row 2 to COB 6.7.15R and case 12 of column row 2 to COB 6.7.17R.

<table>
<thead>
<tr>
<th>Cancellation substitute</th>
</tr>
</thead>
<tbody>
<tr>
<td>The retail customer's right to cancel under COB 6.7.7R(1) or (4) is replaced by the right to withdraw only if:</td>
</tr>
<tr>
<td>1. the firm has supplied (or has reasonably relied upon another firm to supply) to the retail customer, at least 30 days in the case of a life policy and 14 days in any other case before the contract is concluded, a written notice (see note 1) which prominently states:</td>
</tr>
</tbody>
</table>
Cancellation substitute

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>that the <em>retail customer</em> has a that period of at least 14 days within which to consider his pension options;</td>
</tr>
<tr>
<td>(b)</td>
<td>the dates at which the period begins and ends (which must be, in the case of a <em>pension transfer</em>, before the transfer has been irrevocably effected);</td>
</tr>
<tr>
<td>(c)</td>
<td>the pension options available (for example, the <em>open-market option</em> in relation to a <em>pension annuity</em>);</td>
</tr>
<tr>
<td>(d)</td>
<td>the steps the <em>retail customer</em> must take in order to exercise a particular pension option;</td>
</tr>
<tr>
<td>(e)</td>
<td>that the <em>retail customer</em> is entitled to <em>key features</em> and is advised to check with the <em>firm</em> if it has not been received;</td>
</tr>
<tr>
<td>(f)</td>
<td>the cost of any advice given to the <em>retail customer</em> in relation to the transaction; and</td>
</tr>
</tbody>
</table>

2. the *firm* has taken sufficient steps (or has reasonably relied upon the same *firm* as in 1. to take those steps) to ensure that the *customer* has been informed and made fully aware of the potential advantages and disadvantages of proceeding and has had an opportunity to consider all other possible alternatives.

Note:

1. The notice must be issued separately or feature prominently as part of the application form, or *suitability letter* or *key features* supplied to the *customer*.

6.7.20 R [deleted] Cancellation – cash deposit ISA

This table belongs to *COB 6.7.7R(3)*

**Cancellation — cash deposit ISA**

The *firm* must supply (or may reasonably rely upon another *firm* to supply) to the *retail customer* before the account is opened, a written notice (see note 1) which prominently states:

| A. | That the *retail customer* has a 14 day period within which to consider whether or not to keep the account open; |
| B. | The dates at which the 14 day period begins and ends (see note 2); |
| C. | The options available (see note 3); |
| D. | How cancellation will operate in circumstances where the account forms part of a *maxi-ISA* which contains other components (see *COB 6.7.37R*); |
| E. | the steps the *retail customer* must take to communicate any decision not to proceed with the account (see *COB 6.7.42R* to 6.7.46G); and |
Cancellation—cash deposit ISA

F. That a retail customer who exercises a right to cancel will not incur any additional charges or be affected by any notice period.

Notes:

1. The notice must be issued separately or feature prominently as part of the minimum information supplied to the retail customer.

2. Unless the firm has specified a longer period to the retail customer, the minimum expiry date is the end of the fifteenth day from the date the account was opened.

3. A firm must either assist the retail customer in switching accounts or refund all monies deposited together with interest.

Voluntary provisions

6.7.21 R If anything in column row 2 of either COB 6.7.15R or COB 6.7.17R removes the right to cancel a contract investment agreement, but a firm voluntarily gives the retail customer a right to cancel in any event, the firm must treat the agreement contract as if it were cancellable under COB 6.7.7R(1).

6.7.22 G (1) If the firm has any doubt whether a contract investment agreement or the circumstances of its purchase bring the case within any part of COB 6.7.7R(1), it should treat the agreement contract as if it were cancellable.

(2) A firm that informs a retail customer that he has sends a pre-sale notice or post-sale notice of a right to cancel where it is not obliged to give a right to cancel do so under COB 6.7.30R will be taken to have voluntarily granted the retail customer a right to cancel (unless, for the purposes of COB 6.7.17R, there is a relevant client agreement between the firm and the retail customer).

Variations

6.7.23 R (1) After an increase in regular or single premiums or payments (including a pension transfer) to a life policy, pension contract or stakeholder pension scheme, a retail customer, who is an individual, has a right to cancel (see COB 6.7.7R(4)) in the following circumstances unless (2) applies:

(a) any variation, other than a ‘pre-selected option’ (see COB 6.7.26G), providing for substantial increases in premium or payment where the increase:

(i) is being paid by way of varying the existing agreement contract; or

(ii) will result in a new agreement contract established
on the same terms as the original agreement contract;

and, in each case, represents an increase on the original premium or payments (or the previous highest agreed premium or payment) of more than 25% (see COB 6.7.25G); or

(b) any variation, other than a 'pre-selected option' (see COB 6.7.26G), that results in a new agreement contract which involves fresh contract terms or imposes additional obligations on the retail customer due to a change in the terms of the original agreement contract;

(c) any variation where the increase represents the proceeds of a pension transfer.

(2) Paragraph (1) does not apply if:

(a) there would have been no right to cancel the original contract investment agreement under COB 6.7.7R(1) had that agreement been entered into on the date of the variation; or

(b) the variation arises out of the settlement of a claim for damages or compensation connected with a previous contract investment agreement.

(3) A firm may use the cancellation substitute in COB 6.7.19R in relation to a variation of a contract investment agreement in any case where that substitute would have been available to it had the contract agreement been entered into on the date of the variation.

Electronic communication relating to cancellation and withdrawal

6.7.27 G For electronic transactions (for example, facsimile, e-mail or Internet) firms are referred to the guidance in COB 1.8. The rules in COB permit the firm to issue the pre-sale or post-sale notices information about a right to cancel and other communications, and to accept notice from customers who are exercising the right to cancel or withdraw, by electronic means. However, a firm should be able to demonstrate that the customer wishes to communicate electronically.

Time deadlines relating to cancellation and withdrawal

6.7.28 R [deleted] (1) The deadlines in COB 6.7.10R, item 1 of COB 6.7.19R, item A and note 2 of COB 6.7.20R, COB 6.7.34R(2) and COB 6.7.48R are based on calendar days (excluding public holidays) and must be calculated by reference to the day after the date on which the agreement is concluded.

64
In the event of any contingency beyond the firm or customer's control which prevents delivery or service of the cancellation notice, the period in question must be counted as public holidays and therefore will not count for the purposes of the time delay.

6.7.29 For an example of the operation of COB 6.7.28R(1), in the case of the eight-day deadline, the post-sale notice for an agreement concluded on Wednesday would need to be sent by the firm no later than Thursday of the following week.

Giving the customer notice of the right to cancel — contracts other than distance contracts and cash deposit ISAs

6.7.30 Other than for distance contracts and cash deposit ISAs, where there is a right to cancel, under COB 6.7.7R(1), (2) or (4), the firm which enters into the agreement contract with the customer (also see COB 6.7.31R) must send the customer, in writing, a clear and prominent reminder notice of this right:

(1) (for any contract specified in Part II of COB 6.7.57R to which shortfall applies), no later than the end of the eighth day; and

(2) (in any other case specified in COB 6.7.7R) no later than the end of the fourteenth day;

after the contract is concluded.

(1) before the agreement is concluded (a 'pre-sale notice'); and

(2) after the agreement has been concluded (a 'post-sale notice').

6.7.31 When the customer is a trustee who is reasonably believed by the firm to be expected to act on the instructions of the individual beneficiary or purchaser of the policy or contract, the firm must send a copy of the notice of the right to cancel in COB 6.7.30R post-sale notice to:

... Pre-sale notices

6.7.32 A pre-sale notice must contain at least a summary of the information required in a post-sale notice.

6.7.33 The following is an example of the type of summary statement which firms could use: ‘You will be able to cancel your [investment]/[contract] during a two-week period after concluding the agreement and receive a refund [in full / less a deduction for shortfall to reflect any fall in the markets in the interim]. You will be told of this right in more detail (including when it begins and ends, and how to exercise it) in documents that we will send you at the
Post-sale notices: general

6.7.34  A post-sale notice must be:

(1) In writing;

(2) given to the customer:
   - (a) (for any investment agreement specified in Part II of COB 6.7.57R to which shortfall applies), no later than the end of the eighth day; and
   - (b) (in any other case specified in COB 6.7.7R), no later than the end of the fourteenth day;

After the agreement is concluded;

(3) sufficiently clear, prominent (see COB 6.7.39R) and informative to enable the customer to exercise the right to cancel; and

(4) accompanied by a slip or form (or an electronic equivalent) to enable the customer to exercise a right to cancel.

Post-sale notices: method of sending

6.7.35  A post-sale notice must be sent by post, or electronically, except in the case of an industrial assurance policy, when it may, instead, be given to the customer by hand.

Post-sale notices: content

6.7.36  A post-sale notice must state:

(1) That there is an agreement between the customer and the firm;

(2) That there is a right to cancel the agreement;

(3) the duration of the right to cancel and the date at which the right begins and ends;

(4) the steps the customer must take to cancel the agreement;

(5) the consequences of cancelling the agreement, including a prominent statement of any shortfall (see COB 6.7.54R) which the customer will have to bear;

(6) (as a prominent reminder) that the customer is entitled to key features and is advised to check with the firm if the key features have not been received (except in the case of pure protection.
contracts); and

(7) That the customer's right to cancel will remain unaffected if any contingency beyond the customer's control arises which makes it impracticable for the customer to communicate his wish to cancel (see COB 6.7.28R).

Post-sale notices: ISAs

6.7.37 R [deleted] In the case of ISAs, a firm must ensure that the slip or form in COB 6.7.34R(4)(1) will enable the customer to indicate whether the entire ISA agreement is to be cancelled or just a particular component or product.

6.7.38 G [deleted] For example, in the case of a maxi-ISA, the customer:

(1) has to be able to cancel at the component (or underlying product) level and is not compelled to cancel other components (or products);

(2) needs to know that the effect of cancelling the last component has the effect of cancelling the entire ISA agreement and may also (where it is the case) delay the customer from entering into another ISA agreement until the next tax year.

Prominence of post-sale notice:

6.7.39 R [deleted] To comply with COB 6.7.34R(3), where the post-sale notice forms part of another document or is one of a number of documents sent to the customer at the same time, a firm must ensure that the presence of the post-sale notice is draw to the customer's attention (see COB 6.7.40G).

6.7.40 G [deleted] Where the post-sale notice forms part of a brochure or is included in a pack of documents, the front of the brochure or pack should prominently feature words such as: 'IMPORTANT: information about your right to cancel this agreement is enclosed'.

Failure to send post-sale notice give information on cancellation rights

6.7.41 R G If a firm does not send a post-sale notice when required by these rules give a retail customer information about his cancellation rights in accordance with COB App 1.1.1R(17), the contract remains cancellable and the retail customer can cancel the agreement at any time within two years of the agreement and will not be liable for any shortfall (see COB 6.7.56R(31)).

Exercising the right to cancel

6.7.42 R A retail customer who has a right to cancel under COB 6.7.7R may, without giving any reason, cancel the agreement contract by serving
notice upon the firm, before expiry of the relevant cancellation period either:

(1) by post to the firm’s last known address; or

(2) in accordance with any other practical instructions for exercising that right provided to the customer in accordance with COB App 1.1.1R (17)(b).

6.7.43 R [deleted] Notice of cancellation is valid if sent by post or in any other manner that the firm has told the customer is acceptable.

Valid notice of cancellation

6.7.44 R (1) A notice of cancellation given by a retail customer is valid when it is served on, or otherwise sent by post to the firm’s last known address, addressed to the firm, its appointed representative or on any agent of the firm with authority to accept notice on the firm’s behalf.

(2) A firm must treat any notice of cancellation sent by prepaid post, or otherwise sent, and valid in accordance with COB 6.7.43R and COB 6.7.44R(1), as being served on the date it was posted or sent. Where the notice of cancellation is in a durable medium and served in accordance with COB 6.7.42R, it must be treated as being served on the firm on the date it is despatched by the retail customer.

…

6.7.46 G In the event of any dispute, unless there is clear written evidence to the contrary, the firm should treat the date cited by the customer as being the date when the notice was given, posted or otherwise sent.

…

6.7.48 R If a firm has provided information on cancellation rights in accordance with COB App 1.1.1R(17), sent a post-sale notice, it need not (unless COB 6.7.11R applies) accept a notice of cancellation if it is served later than the period specified for that agreement contract in COB 6.7.10R.

…

Effects of cancellation

6.7.51 R By exercising a right to cancel under COB 6.7.7R(1), (2) or (4), the retail customer withdraws from the investment agreement contract and:

(1) the entire agreement contract; or

(2) the particular ISA component (see COB 6.7.37R); or
(3) the variation alone (see COB 6.7.23R(1));

is rescinded terminated.

Automatic cancellation of an attached distance contract

6.7.51 A

<table>
<thead>
<tr>
<th>6.7.51A</th>
<th>G</th>
</tr>
</thead>
</table>

Regulation 11 (Automatic cancellation of an attached distance contract) of the Distance Marketing Regulations, has the effect that when notice of cancellation is given in relation to a contract, that notice also operates to cancel any attached distance financial services contract which does not fall within one of the exceptions to the right to cancel in regulation 10. So the attached contract will not be cancelled if the price of the service depends on fluctuations in the financial market outside the firm's control or if performance of the contract has been fully completed by both parties at the consumer's express request.

6.7.52 R

When a retail customer exercises a right to cancel under COB 6.7.7R(1), (2), (3) or (4):

(1) the firm must:

(a) pay to the retail customer (or, in the case of a pension transfer or pension annuity, for the benefit of the retail customer) without delay, and no later than 30 days after the date on which the firm received notice of cancellation from the retail customer, any sums which the customer has paid to or for the benefit of the firm in connection with the agreement contract (including sums paid by the retail customer to agents of the firm) except for the amount referred to in (b):

(b) subject to (c), the firm is permitted to require the retail customer to pay for the services it has actually provided in connection with the contract; the amount payable, however, must be in accordance with the sums which the retail customer agreed to pay and must not:

(i) exceed an amount which is in proportion to the extent of the service already provided to the retail customer by the firm; and

(ii) be such that it could be construed as a penalty;

(c) sub-paragraph (b) applies only if:

(i) the contract is a distance contract within COB 6.7.17R, Row 1, case D (Distance contracts for certain designated investment business or accepting deposits);

(ii) where performance of the contract has
commenced before expiry of the cancellation period, this was requested by the retail customer; and

(iii) the firm can demonstrate that the retail customer was provided with details of the amount which he may be required to pay if exercising his right to cancel in accordance with COB App 1.1.1R(17)(a).

(2) The firm is entitled to receive without delay, and no later than 30 days after the date on which the customer posted or otherwise sent notice of cancellation to the firm:

(a) any sums or property or both that became the customer's under the contract; and

(b) payment of any shortfall due under COB 6.7.54R.

and the firm is entitled to receive:

(1) Any property that became the customer's under the agreement contract; plus

(2) Any sum which the firm has paid under the agreement contract; plus

(3) (subject to COB 6.7.56R) any shortfall due under COB 6.7.54R.

... Shortfall where there is a right to cancel a non-distance contract

6.7.54 R If a firm has sent a post-sale notice that satisfies the rules in COB 6.7 and the market falls during the cancellation period, the firm is entitled under COB 6.7.52R(2)(b) to charge the retail customer for the market loss (that is, shortfall), calculated in accordance with COB 6.7.58R, which the firm would incur in cancelling any contract investment agreement specified in COB 6.7.57R.

Shortfall: worked example

6.7.55 G COB 6.7.58R illustrates the process that firms need to undertake in order to discover the amount (that is, shortfall) by which the purchase price paid by the retail customer is greater than the purchase price prevailing when the firm becomes aware that the retail customer has cancelled. EXAMPLE: In the case of dual-priced investments, the shortfall on cancellation is calculated on an offer-to-offer basis; for example, 1,000 units are purchased at an offer price of 209.1p and the offer price is (or, in the case of a forward price, is subsequently ascertained to be) 196.2p as at the time when the firm became aware that notice of cancellation had been served by the retail customer. The shortfall on cancellation, therefore, is \( (209.1 - 196.2) = (12.9p \times 1,000) = £129 \).
Exceptions to shortfall

6.7.56 R  A firm will have no right to charge a retail customer for any shortfall which results from the customer having exercised a right to cancel in any of the following circumstances:

(1) if the firm does not give the customer sends the notice of his cancellation rights pre-sale notice, or the post-sale notice, as later than required by the rules in COB App 1.1.1R (17) (whether the retail customer’s cancellation notice is valid or not);

(2) if the firm fails to make any prominent mention of shortfall in the information about cancellation pre-sale or post-sale notice;

(3) if the firm has failed to send a post-sale reminder notice as required by COB 6.7.30R (2);

(4) if the customer has served the cancellation notice before the contract agreement is concluded.

6.7.57 R  Table: Contracts Investment agreements which are subject to shortfall

<table>
<thead>
<tr>
<th>Investment agreements which are subject to shortfall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part I: any contract investment agreement specified in row column 1 of COB 6.7.15R (unless note 1 applies):</td>
</tr>
<tr>
<td>…</td>
</tr>
<tr>
<td>Part II: any contract investment agreement specified in row column 1 of COB 6.7.17R (unless note 2 applies):</td>
</tr>
<tr>
<td>…</td>
</tr>
<tr>
<td>Notes:</td>
</tr>
<tr>
<td>Shortfall does not apply to any contract investment agreement which is established at the outset:</td>
</tr>
<tr>
<td>…</td>
</tr>
</tbody>
</table>

6.7.58 R  Table: Calculation of shortfall

<table>
<thead>
<tr>
<th>Calculation of shortfall</th>
</tr>
</thead>
<tbody>
<tr>
<td>A firm must calculate shortfall as at the ‘relevant date’ (see note 1) as follows:</td>
</tr>
<tr>
<td>…</td>
</tr>
</tbody>
</table>
### Calculation of shortfall

<table>
<thead>
<tr>
<th>Calculation of shortfall</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B.</strong> take the equivalent payment that would have been quoted (see notes 3, 4 and 5) to the same <em>retail customer</em> assuming an identical purchase was made at the ‘relevant date’;</td>
</tr>
<tr>
<td><strong>C.</strong> add to the figure at B the amount of any income included in the figure at A (but originally excluded from the figure at B for the purposes of distribution to <em>retail customers</em>); and</td>
</tr>
</tbody>
</table>

### Notes:

2. If the agreement is a variation of a previous *agreement contract* (see *COB 6.7.23R*), the *firm* must treat the increase in *premium* as the sum in A.

---

6.8.3 **R** A *firm* must ensure that, before entering into a *pure protection contract* with a *client*, it provides the *client* with the information specified in *COB 6.5.49R*, unless at the time of application, the *client*, other than an *EEA ECA recipient*, is habitually resident:

(1) *(except for a distance contract with a retail customer)* in an *EEA State* other than the *United Kingdom*; or

---

6.8.12 **R** Before entering into a *general insurance contract* with an individual when the *United Kingdom* is the *State of the risk* or the individual is an *EEA ECA recipient*, a *firm* must, subject to *COB 6.8.13* and *COB 6.8.13A* provide the individual with:

---

6.8.13A **R** *COB 6.8.12R* does not apply if the contract is a *distance contract* with a *retail customer* who is not present in the *United Kingdom*.

---

10 **G** Except in relation to a *distance contract* with a *retail customer* for the sale or purchase as *principal* of units in a *scheme* (for which see *COB 4.2.5R* and *COB 4 Ann 1R(6)(c)*), *COB 10.6.2R* fulfils the purpose of the *terms of business* (including the *client agreement*) requirements (see *COB 4.2*) in the context of an *unregulated collective investment scheme* by application of content requirements in scheme documents.

---

72
After COB 12, insert the following new Appendix:

COB Appendix 1  Required information for certain terms of business, key features and direct offer financial promotions

1.1.1 R  Table  Required information
This table belongs to COB 3.9.6R, COB 4.2.10R, COB 6.2.16R, COB 6.2.18R, COB 6.4.13R, COB 6.4.25R, COB 6.4.27R and COB 6.5.2R(6), COB 6.5.42R to COB 6.5.44R.

<table>
<thead>
<tr>
<th>Required information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The supplier</strong></td>
</tr>
</tbody>
</table>
| (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant to the *customer’s* relations with the *firm*.
| (2) Where the *firm* has a representative established in the *customer’s EEA State* or other country of residence, the identity of that representative and the geographical address relevant to the *customer’s* relations with him.
| (3) Where the *customer’s* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *customer*, and the geographical address relevant to the *customer’s* relations with that professional. |
### Required information

<table>
<thead>
<tr>
<th>(4)</th>
<th>(a) For authorised persons:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(i) the required disclosure statement in GEN 4 Ann 1R (Statutory status disclosure); and</td>
</tr>
<tr>
<td></td>
<td>(ii) the fact that the person is entered on the FSA Register and his FSA registration number.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(b)</th>
<th>For unauthorised persons:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(i) where the person's activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority; and</td>
</tr>
<tr>
<td></td>
<td>(ii) where the person is registered in a trade or similar public register, the trade register in which the person is registered and his registration number or an equivalent means of identification in that register.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(5)</th>
<th>The financial service</th>
</tr>
</thead>
<tbody>
<tr>
<td>(5)</td>
<td>A description of the main characteristics of the service the firm will provide.</td>
</tr>
</tbody>
</table>

| (6) | The total price to be paid by the customer to the firm for its services, including all related fees, charges and expenses, and all taxes paid through the firm or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the customer to verify it. |

| (7) | Notice of the possibility that other taxes or costs may exist that are not paid through the firm or imposed by it. |

<p>| (8) | Details of any specific additional cost to the customer for using a means of distance communication. |</p>
<table>
<thead>
<tr>
<th>Required information</th>
</tr>
</thead>
<tbody>
<tr>
<td>(9) Where relevant, notice indicating that the service involves special risks related to its specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the firm's control and that past performance is no indicator of future performance.</td>
</tr>
<tr>
<td>(10) Any limitations of the period for which the information provided is valid.</td>
</tr>
<tr>
<td>(11) The arrangements for payment and performance.</td>
</tr>
</tbody>
</table>

The contract

| (12) In relation to services performed permanently or recurrently, the minimum duration of the contract. |
| (13) The EEA State or States whose laws are taken by the firm as a basis for the establishment of relations with the retail customer prior to the conclusion of the contract. |
| (14) Any contractual clause on law applicable to the contract or on competent court, or both. |
| (15) The language in which the contract is supplied and in which the firm will communicate during the course of the contract. |
| (16) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases. |
### Required information

| (17) | The existence or absence of a right to cancel under *COB 6.7* and, where there is such a right:
|      | (a) its duration and the conditions for exercising it, including information on the amount which the *customer* may be required to pay (or which may not be returned to the *customer*) in accordance with *COB 6.7.52R(1)(b)*, as well as the consequences of not exercising it; and
|      | (b) practical instructions for exercising the right to cancel, including as a minimum the method in *COB 6.7.42R(1)* and details of the address to which any cancellation notice should be sent. |

### Redress

| (18) | How to complain to the *firm*, whether or not complaints may subsequently be referred to the *Financial Ombudsman Service* and information about any other applicable named complaints scheme. |

| (19) | Whether or not compensation may be available from the *compensation scheme* should the *firm* be unable to meet its liabilities, and information about any other applicable named compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained. (See the example in *COB 5.5.11 G* (Investment firms: compensation information)). |
Annex B

Amendments to the Insurance: Conduct of Business sourcebook

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

ICOB Transitional provisions

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>§</td>
<td>ICOB 4.7.1R and ICOB 8.4.1R</td>
<td>G</td>
<td>ICOB 4.7.1R and ICOB 8.4.1R apply equally to contracts sold before 14 January 2005 and which come up for renewal after that date as they do to contracts newly entered into after 14 January 2005. Firms may, if they wish, get consent for future renewals when the contract is first sold or at the next renewal.</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4.7.1 R Unless Subject to ICOB 4.7.2R applies, an insurance intermediary or an insurer must not, in relation to a non-investment insurance contract that is a distance contract:

(1) advise on, arrange, enter into, renew, carry out or assist in the administration and performance of such a contract for a retail customer without a prior request on his part, when the supply of such a service includes a request for immediate or deferred payment; or

(2) enforce any obligation against a retail customer in the event of unsolicited supplies of such services, the absence of a reply not constituting consent.
4.7.2 R

ICOB 4.7.1R does not prevent an insurance intermediary or an insurer from exercising any right that he may have, by contract or otherwise, to renew a distance contract with a retail customer without any request made by or on behalf of that retail customer prior to the renewal of the contract apply for a tacit renewal of a distance contract.

4.7.3 G

(1) ICOB 4.7.1R(1) prohibits an insurance intermediary (or an insurer when acting as product provider) from advising on, arranging, entering into, renewing, carrying out or assisting in the administration and performance of a non-investment insurance contract that is a distance contract for a retail customer without the prior consent of that retail customer. This prohibition in ICOB 4.7.1R includes the continuation of insurance after a specified period where the insurance has been free of charge to the retail customer during that period unless the retail customer has agreed before the period expires to pay for the insurance once the period has expired.

(2) Where the payment for the contract is made by regular instalments (for example, by direct debit), the effect of ICOB 4.7.2R is that an insurance intermediary (or an insurer when acting as product provider) will be required to seek the retail customer's consent on renewal to continue to provide insurance only if the contract does not give it the right to do so without further reference to the retail customer.

(3) The prior consent of the retail customer can either be express, or deduced from the circumstances of the case (for instance, by the retail customer providing an updated direct debit mandate to the firm).

8.4.1 R

Unless Subject to ICOB 8.4.2R applies, an insurance intermediary must not, in relation to a distance non-investment mediation contract:

(1) advise on, arrange, enter into, renew, carry out or assist in the administration and performance of such a contract for a retail customer without a prior request on his part, when the supply of such a service includes a request for immediate or deferred payment; or

(2) enforce any obligation against a retail customer in the event of unsolicited supplies of such services, the absence of a reply not constituting consent.

8.4.2 R

ICOB 8.4.1R does not prevent an insurance intermediary from exercising any right that he may have, by contract or otherwise, to renew a distance non-investment mediation contract with a retail customer without any request made by or on behalf of that retail customer prior to the renewal of the contract apply for a tacit renewal of a distance non-investment mediation contract.
8.4.3 (deleted) (1) Where the payment for the contract is made by regular instalments (for example, by direct debit), the effect of ICOB 8.4.2R is that an insurance intermediary will be required to seek the retail customer's consent on renewal to continue to provide mediation services only if the contract does not give him the right to do so without further reference to the retail customer.

(2) The prior consent of the retail customer can either be express, or deduced from the circumstances of the case (for instance, by the retail customer providing an updated direct debit mandate to the firm).
Annex C

Amendments to the Mortgages: Conduct of Business sourcebook

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

4.5.4 R Unless Subject to MCOB 4.5.5R applies, a firm must not:

(1) advise on, arrange, or enter into, or renew a distance mortgage mediation contract with a retail customer without a prior request on his part, when the supply of such a service includes a request for immediate or deferred payment; or

(2) enforce any obligation against a retail customer in the event of unsolicited supplies of such services, the absence of a reply not constituting consent.

4.5.5 R MCOB 4.5.4R does not prevent an firm from exercising any right that he may have, by contract or otherwise, to renew a distance contract with a retail customer without any request made by or on behalf of that retail customer prior to the renewal of the contract apply for a tacit renewal of a distance contract.
Annex D

Amendments to the Market Conduct sourcebook

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

3.1.3 R This chapter does not apply to the carrying on of the following activities:

... (3) corporate finance business; or

(4) safeguarding and administering investments and agreeing to carry on that regulated activity; or

(5) concluding a distance contract with a retail customer.
Annex E

Amendments to the Authorisation manual

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

5 Ann 3 G

…

<table>
<thead>
<tr>
<th>(1) Module of Handbook</th>
<th>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
<th>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>Where the activity:</td>
</tr>
<tr>
<td><strong>COB</strong></td>
<td><strong>COB applies.</strong></td>
<td>(1) (a) would fall within the overseas persons exclusions in article 72 of the Regulated Activities Order; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) would not be regarded as carried on in the United Kingdom; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) is not carried on with or for a client in the United Kingdom;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>then only the following apply:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) COB 3 (Financial promotion), but see the territorial scope in COB 3.3 (Where?);</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(e) COB 5.5.7R and COB 5.5.8R (Overseas business); and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(f) COB 6.6 to COB 6.12, COB 6.7 and COB 6A.8 (Contents of key features, stakeholder pension schemes decision trees, Cancellation and withdrawal, Insurance contracts: life and general) certain parts of COB 6 (Product disclosure and the</td>
</tr>
</tbody>
</table>
(1) Module of Handbook | (2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom | (3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom

| ECO 2 applies if the firm is an outgoing ECA provider, ECO 3 applies if the firm is a domestic ECA provider, ECO 1 does not apply. | customer’s right to cancel or withdraw but only in relation to long-term insurance business carried on with a customer habitually resident in the United Kingdom or if the State of the risk is the United Kingdom (see COB 1.4.7R and COB 1.4.8R). |

(2) concerns a distance contract and is carried on with retail customers in the United Kingdom from an establishment maintained by the firm in an EEA State which:

(a) has implemented the DMD; or

(b) has obligations in its domestic law corresponding to those provided for by the DMD;

COB 4.2, COB 5, and COB 6 do not apply.

Otherwise, as column (2), (see COB 1.4.3R).

ECO 1 applies if the firm is an incoming ECA provider except for ECO 1.2.1R which does not apply if:

(a) the electronic commerce activity is not insurance business which:

   (i) satisfies the conditions in ECO 1.2.3R; and

   (ii) is carried on by an insurer; and

(b) the EEA State from which the activity is provided has implemented the DMD with the
| (1) Module of Handbook | (2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom | (3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom |

result that the obligations provided for by the DMD are applied when the incoming ECA provider is carrying on the activity from an establishment in that State with a UK ECA recipient in the United Kingdom.

ECO 2 and ECO 3 do not apply.
Annex F

Amendments to the Credit Unions sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place that it goes is indicated and the text is not underlined.

11.1.2 G (1) The rules and guidance set out in COB mainly apply to designated investment businesses and, as stated in COB 1.3.2G(2), have limited application to deposits.

(2) The only parts of COB that sets out rules and guidance on deposits, other than for a cash deposit ISA, is that are those relating to financial promotion in COB 3 and those relating to distance contracts for accepting deposits in COB 2.6 (General provisions related to distance contracts), COB 6.7 (Cancellation and withdrawal) and COB 6.4.25R (Entering into a distance contract for accepting deposits). Guidance on the way in which those requirements apply to credit unions is set out in CRED 11.2 (Financial promotion) and CRED 11.4 (Entering into a distance contract for accepting deposits). These are summarised in CRED 11.2 (Financial Promotion).

... 

11.2.1 G The only part of COB that sets out rules and guidance on deposits other than a cash deposit ISA is that relating to financial promotion in COB 3. Financial promotion is defined as an invitation or inducement to engage in investment activity.

... 

After CRED 11.3, insert the following new section:

11.4 Entering into a distance contract for accepting deposits

11.4.1 G Those parts of COB that relate to distance contracts for accepting deposits will have limited application to credit unions. This is because the DMD only applies where there is “an organised distance sales or service-provision scheme run by the supplier” (Article 2(a)). If, therefore, the credit union normally operates face-to-face and has not set up facilities to enable customers to deal with it at a distance, such as facilities for a customer to deal with it purely by post, telephone, fax or the Internet, the provisions will not be relevant. A one-off transaction dealt with by distance means in order to deal with a particular contingency or emergency will not fall under the COB provisions.

11.4.2 G For those credit unions to which the provisions in COB will apply, the provisions which are of particular relevance concern the general provisions (COB 2.6), pre-contract information (COB 6.4.25R), cancellation rights
(COB 6.7) and financial promotion (discussed at CRED 11.2). If the credit union provides cash deposit ISAs further rules may apply.

Pre-contract disclosure requirements

11.4.3 G COB 6.4.25R sets out the basic requirement that applies before a credit union enters into a distance contract for accepting deposits. The credit union has to ensure that the terms on which it will conduct business, including, in particular, certain required information, is provided to a retail customer (which means an individual, acting for purposes which are outside his trade, business or profession) in good time (that is, in sufficient time to enable a customer to consider properly the services on offer) in a durable medium, before the retail customer is bound by the distance contract, unless certain exemptions apply.

11.4.4 G The required information is the contractual terms and conditions and the other information set out in COB App 1, and covers basic information about the credit union, the main characteristics of the service on offer, the price, details about the distance contract such as its duration, cancellation rights and any other early termination rights and penalties, and information about out-of-court complaints and compensation arrangements.

Exemptions

11.4.5 G The exemptions referred to in CRED 11.4.3G are set out in COB 6.4.25R. They are relevant:

(1) where the contract is concluded by telephone and the retail customer gives explicit consent to receiving a more limited range of information. COB 6.4.27R sets out the information to be provided in such cases. Full information has to be provided, in a durable medium, immediately after conclusion of the distance contract (COB 6.4.25R(2));

(2) where a means of communication (other than telephone) is used which does not enable provision of the required information in a durable medium before conclusion of the contract; in this case full information must also be provided in a durable medium immediately after conclusion of the distance contract (COB 6.4.25R(3));

(3) where there is an initial service agreement and the contract is in relation to a successive or separate operation of the same nature under that agreement, or there is no initial service agreement and the contract is in relation to a successive or separate operation of the same nature and is being performed no more than one year from the date of performance of the last operation (see COB 1.10.2G).

11.4.6G The other provisions in COB which relate to the disclosure requirements and are of relevance to credit unions entering into a distance contract for accepting deposits are in COB 2.6 (General provisions related to distance contracts). COB 1.11.2R (Exemption for firms which follow the Banking
Code Guidance) would be relevant if a credit union came within its scope and subscribed to the Banking Code Guidance.

Cancellation

11.4.7G A retail customer has a right to cancel a distance contract for accepting deposits without giving any reasons and without penalty. The right to cancel has to be exercised within 14 days of the day of the conclusion of the contract or the day on which he received the contractual terms and conditions, if later (COB 6.7.10R).

11.4.8G The only exemptions from the right to cancel are when:

(1) the price of the service depends on fluctuations in the financial market outside the credit union's control which may occur during the cancellation period; or

(2) the contract has already been fully performed with the retail customer's consent before he exercises his right to cancel; or

(3) the credit union has an initial service agreement with the retail customer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see COB 1.10.2G).

11.4.9G The effects of cancellation are set out in COB 6.7.51R to COB 6.7.52R. The credit union has to return, no later than 30 days after the date it received notice of cancellation, any sums paid by the customer in connection with the contract. The customer can be required to pay for any services provided up to the date of cancellation, provided that the sums payable are in proportion to the extent of the service actually provided and could not be construed as a penalty. No payment can be required if the credit union cannot prove that a customer was told the amount that would be payable as part of the pre-contract information or if the credit union starts performance of the contract without the customer’s prior consent.

11.4.10G If there are other ancillary distance contracts related to the first, those ancillary contracts may also be cancelled automatically when a retail customer exercises a right to cancel (see COB 6.7.51R).

11.4.11G This guidance is not a substitute for, and should be read in conjunction with, the requirements contained in the relevant parts of COB.

…
### Appendix 2.1
Detailed content of CRED

#### 2.1.1 P

<table>
<thead>
<tr>
<th></th>
<th>Conduct of business</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>11.1</td>
<td>Introduction</td>
</tr>
<tr>
<td>11.2</td>
<td>Financial promotion</td>
</tr>
<tr>
<td>11.3</td>
<td>Statutory status disclosure</td>
</tr>
<tr>
<td>11.4</td>
<td>Entering into a distance contract for accepting deposits</td>
</tr>
</tbody>
</table>

...
Annex G

Amendment to the Electronic Commerce Directive sourcebook

In this Annex, underlining indicates new text.

Exceptions: regulated mortgage contracts

1.2.4A R  
*ECO* 1.2.1R does not apply to an *incoming ECA provider* with respect to an *electronic commerce activity* which relates to a *regulated mortgage contract*.

... Exception: activities (other than insurance) from EEA States which have implemented the DMD

1.2.5A R  
*ECO* 1.2.1R does not apply to an *incoming ECA provider* with respect to an *electronic commerce activity*, if the following conditions are satisfied:

1. The activity is not *insurance business* which:
   1. satisfies the conditions in *ECO* 1.2.3R; and
   2. is carried on by an *insurer*; and

2. The *EEA State* from which the activity is provided has implemented the *DMD* with the result that the obligations provided for by the *DMD* are applied when the *incoming ECA provider* is carrying on the activity from an *establishment* in that State with a *UK ECA recipient* in the *United Kingdom*.
Annex H

Amendments to the Professional firms sourcebook

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

5.1.2 G This chapter:

…

(2) …; and

(3) … ;

(4) gives effect to the Distance Marketing Regulations with respect to the non-mainstream regulated activities of authorised professional firms.

…

5.3.2 G COB 1.2.1R(4) provides that COB does not apply to an authorised professional firm with respect to its non-mainstream regulated activities except for COB 2.1 (Clear, fair and not misleading communication), COB 3 (Financial promotion) and COB 4.2.1R to COB 4.2.6G, COB 4.2.9R to COB 4.2.11E and COB 4.2.15E(26) (Terms of business and client agreements with customers) COB 4.2.12AE and COB 4 Ann 2E(25) (Content of terms of business).

…

5.4 Application of the Distance Marketing Regulations

5.4.1 R (1) An authorised professional firm must, with respect to its non-mainstream regulated activities, comply with regulations 6 to 10, 14 to 15(2) and 16 to 20 of the Distance Marketing Regulations and those regulations have effect to cancel distance contracts the making or performance of which by such firms constitutes a non-mainstream regulated activity.

(2) Paragraph (1) does not apply in relation to regulations 6 to 7 and 14 to 15(2) if the designated professional body of the authorised professional firm has rules equivalent to those regulations and:

(a) those rules have been approved by the FSA under section 332(5) of the Act; and

(b) the authorised professional firm is subject to those rules in the form in which they have been approved.

5.4.2 G The effect of PROF 5.4.1R is that it allows designated professional bodies to make rules which allow an authorised professional firm to comply with the Distance Marketing Regulations in respect of its non-mainstream regulated activities in the same way as an exempt professional firm which is a member of the same designated professional body in respect of its exempt regulated activities.
Annex I

Amendments to the Electronic money sourcebook

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

Distance marketing activities

1.1.5 G (1)  *ELM* 1.4A sets out certain minimum requirements under the *Distance Marketing Directive* in respect of a customer’s cancellation rights. These rules are supplemented by the requirements in *COB* 6.7.42R (Exercising the right to cancel); *COB* 6.7.47R (Record keeping); *COB* 6.7.48R (Cancellation notices served out of time) and *COB* 6.7.51R to *COB* 6.7.53R (Effects of cancellation) which all apply to e-money firms.

(2) As set out in *ELM* 6.8, *COB* 6.4.25R applies to e-money firms as if references to 'issuing deposits' and 'deposits' were references to 'issuing e-money' and 'e-money' respectively.

After *ELM* 1.4, insert the following new section:

1.4A Distance contracts: cancellation

Right to cancel

1.4A.1 R A retail customer has a right to cancel a distance contract the making or performance of which by the firm constitutes, or is part of, issuing e-money unless:

(a) the performance of the distance contract has been fully completed by both parties at the customer’s express request before the customer exercises his right to cancel; or

(b) the firm has an initial service agreement with the customer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see *COB* 1.10.2G).

Cancellation period

1.4A.2 R The right to cancel referred to in *ELM* 1.4A.1R starts on the later of:

(a) the day of the conclusion of the contract; and

(b) the day on which the retail customer receives the contractual terms and conditions and other information required by *ELM* 6.8 (Information);

and lasts for 14 calendar days.
Failure to give information on cancellation rights

1.4A.3 R If a firm does not give a retail customer notice of his cancellation rights in accordance with ELM 6.8.2AR and COB 6.4.25R, the contract remains cancellable and the retail customer can cancel the agreement at any time.

Exercising the right to cancel

1.4A.4 R A retail customer may, without giving any reason, cancel the contract by serving notice upon the firm, before expiry of the relevant cancellation period, in accordance with the instructions for exercising that right provided to the customer in accordance with ELM 6.8.2AR and COB 6.4.25R.

1.4A.5R The following rules also apply as if issuing e-money were accepting deposits: COB 6.7.47R (Record keeping); COB 6.7.48R (Cancellation notices served out of time) and COB 6.7.51R to COB 6.7.53R (Effects of cancellation).

1.5.2 G Table: Application of other parts of the Handbook to ELMIs

<table>
<thead>
<tr>
<th>Block</th>
<th>Module</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Block 2 (Business Standards)</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>
| Conduct of Business sourcebook (COB) | …                              | The effect of:

(1) ELM 6.8.2AR is that COB 2.6 (General provisions in relation to distance contracts) applies;

(2) ELM 1.4A.5R is that COB 6.7.47R; COB 6.7.48R and COB 6.7.51R to COB 6.7.53R apply; and

(3) ELM 6.8.2AR is that COB 6.4.25R (Entering into a distance contract for accepting deposits) applies in relation to distance contracts concluded with retail customers as if references to 'accepting deposits' and 'deposits' were references to 'issuing e-money' and 'e-money' respectively.

Otherwise, COB does not apply to an ELMI when issuing e-money. …
6.8 Information

6.8.1 R A firm must not issue e-money to any person unless that person has been supplied with the information in ELM 6.8.2R and, where appropriate, ELM 6.8.2AR.

... 

6.8.2A R COB 2.6 (General provisions related to distance contracts) and COB 6.4.25R (Entering into a distance contract for accepting deposits) applies to a firm as if references to ‘accepting deposits’ and ‘deposits’ were references to ‘issuing e-money’ and ‘e-money’ respectively.

6.8.3 R The information in ELM 6.8.2R must be in a durable medium writing and in a readily comprehensible form.

... 

6.8.7 G [deleted] Firms are reminded that GEN 2.2.14 R says that a provision in the Handbook that refers to a document "in writing" means a document in legible form and capable of being reproduced on paper, irrespective of the medium used. Thus the information that ELM 6.8.3 R says must be produced in writing does not have to be produced in the form of a physical document.
Annex J

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

(1) New definitions:

Insert the following new definition in the appropriate alphabetical position:

<table>
<thead>
<tr>
<th>Definition</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>distance contract</td>
<td>any contract concerning financial services, the making or performance of which constitutes or is part of a regulated activity, concluded under an organised distance sales or service provision scheme run by the contractual provider of the service who, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication up to and including the time at which the contract is concluded.</td>
</tr>
<tr>
<td>Distance Marketing Regulations</td>
<td>The Financial Services (Distance Marketing) Regulations 2004 (SI 2004/[]).</td>
</tr>
<tr>
<td>DMD</td>
<td>Distance Marketing Directive.</td>
</tr>
<tr>
<td>durable medium</td>
<td>(a) paper; or (b) (in accordance with article 2(f) of the Distance Marketing Directive and article 2(12) of the Insurance Mediation Directive) any instrument which enables the recipient to store information in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored; this includes, in particular, floppy disks, CD-ROMs, DVDs and the hard drive of the recipient’s computer on which electronic mail is stored, but not Internet websites unless they fulfil the criteria in this definition.</td>
</tr>
<tr>
<td>means of distance communication</td>
<td>(in accordance with article 2(e) of the Distance Marketing Directive) any means used for the distance marketing of a service between parties which does not involve the simultaneous physical presence of those parties.</td>
</tr>
<tr>
<td>retail customer</td>
<td>(in accordance with the meaning of ‘consumer’ in article 2(d) of the Distance Marketing Directive) an individual who is acting for purposes which are outside his trade, business or profession.</td>
</tr>
</tbody>
</table>
Amend the following definitions as shown:

<table>
<thead>
<tr>
<th>Definition</th>
<th>Amended Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>inter-professional business</td>
<td>… but excluding the carrying on of the following activities: (v) concluding a <em>distance contract</em> with a <em>retail customer</em>; …</td>
</tr>
<tr>
<td>private customer</td>
<td>(1) (except in COB 3, 4.2 and 6.4) …</td>
</tr>
<tr>
<td></td>
<td>… (3) (in COB 4.2 and 6.1 to 6.5) a <em>person</em> in (1) and, in relation to the conclusion of a <em>distance contract</em>, a <em>retail customer</em>.</td>
</tr>
<tr>
<td>terms of business</td>
<td>a <em>written statement</em>, supplied to a <em>client</em>, in a <em>durable medium</em> of the terms and conditions on which a <em>firm</em> will conduct <em>designated investment business</em> with or for the a <em>client or retail customer</em>.</td>
</tr>
</tbody>
</table>