

DISTANCE MARKETING DIRECTIVE (AMENDMENT) 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 Motor Insurance Directive) Regulations 2002 (SI 2002/2706).
- 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 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).

(1)	(2)
Conduct of Business sourcebook (COB)	Annex A
Client Assets sourcebook (CASS)	Annex B
Credit Unions sourcebook (CRED)	Annex C
Electronic Commerce Directive sourcebook (ECO)	Annex D
Professional Firms sourcebook (PROF)	Annex E
Glossary of definitions	Annex F

Citation

- E. This instrument may be cited as the Distance Marketing Directive (Amendment) Instrument 2004.

By order of the Board
16 September 2004

Amended by Addendum
19 October 2004

Annex A

Amendment to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. The text shown amended is the text in COB, as amended by the Distance Marketing Directive Instrument 2004 (FSA 2004/39). Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

Transitional provisions TP 4

...

COB 5

...

Table: COB TR6: Distance Marketing Directive transitional rules (applicable to all firms)

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
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...					
3		R	<p>When an <i>insurer effects or carries out, or a firm manages the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's in relation to, a non-investment insurance contract</i> which is a <i>distance contract</i>, then either:</p> <p>(1) the <i>Distance Marketing Regulations</i> (other than regulation 2(3)) apply as if the <i>insurer or firm</i> was an <i>unauthorised person</i>; or</p> <p>...</p> <p><u>Delayed amendment of the Handbook for distance contracts</u></p>	From 9 October 2004 until 14 January 2005	
4	<u>Handbook</u>	R	<p>(1) <u>The amendments to the Handbook made by the Distance Marketing Directive Instrument 2004 and the Distance Marketing (Amendment) Instrument 2004 do not apply to a firm unless it has elected to comply with them.</u></p> <p>(2) <u>An election under (1) is irrevocable. The firm must make a record of the election and retain it for 6 years from 31 October 2004.</u></p>	From 9 October 2004 until 31 October 2004	<u>Already in force</u>

...

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

...

(3) ...;

(4) *corporate finance business*;

~~(4)~~(5) concluding a *distance contract* with a *retail customer*.

...

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

COB	Subject
...	
<u>2.6</u>	<u>General provisions related to distance marketing, but only in relation to <i>distance contracts</i> concluded with <i>retail customers</i></u>
6.7	Cancellation and withdrawal, but only in relation to <i>distance contracts</i> concluded with <i>retail customers</i>
...	

...

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

COB	Subject
...	
<u>2.6</u>	<u>General provisions related to distance marketing, but only in relation to <i>distance contracts</i> concluded with <i>retail customers</i></u>
<u>6.4.25R</u>	<u>Entering into a <i>distance contract</i> to accept deposits, but (a) as if <i>corporate finance business</i> was <i>accepting deposits</i> and (b) only in relation to <i>distance contracts</i> concluded with <i>retail customers</i></u>
6.7	Cancellation and withdrawal, but only in relation to <i>distance contracts</i> concluded with <i>retail customers</i>
...	

...

Distance contract

1.10.4 G not used

(1) To be a *distance contract*, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the 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. The expression 'organised distance sales or service-provision scheme' is not defined in the DMD, but:

- (a) recital 15 of the DMD states that contracts negotiated at a distance involve the use of *means of distance communication* which are used as part of such a scheme not involving the simultaneous physical presence of the supplier and the consumer; and
- (b) recital 18 of the DMD states that the expression is intended to exclude services provided on a strictly occasional basis and outside a commercial structure dedicated to the conclusion of *distance contracts*.

(2) So, in the FSA's view, this means that:

- (a) the *firm* must have put in place facilities designed to enable a *retail customer* to deal with it exclusively at a distance, such as facilities for a *retail customer* to deal with it purely by *post*, telephone, fax or the Internet. If a *firm* normally operates face-to-face and has no facilities in place enabling a *retail customer* to deal with it customarily by distance means, the DMD will not apply. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*; and
- (b) there must have been no simultaneous physical presence of the *firm* and the other party to the contract throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the Internet, through a telemarketing operation or by *post* will normally be *distance contracts*. A *retail customer* may visit the local office of the *firm* in the course of the offer, negotiation or conclusion of the contract with that *firm*. Wherever, in the literal sense, there has been "simultaneous physical presence" of the *firm* and the *retail customer* at the time of such a visit, any ensuing contract will not be a *distance contract*.

...

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 412 (Automatic cancellation of an attached distance contract) on which there is guidance in COB 6.7.51AG; and

(2) regulation ~~13~~14 (Payment by cards).

1.11 Application of COB in relation to deposits

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

Delete the existing table and replace with the following:

COB	Subject matter	Application for cash deposit ISAs	Application for other deposits
2.5.5 R	Exclusion of liability	√ (<i>distance contract only</i>)	√ (<i>distance contract only</i>)
2.6	General provisions related to distance marketing	√ (<i>distance marketing only</i>)	√ (<i>distance marketing only</i>)
3.5.5R to 3.5.7R 3.8.4R to 3.8.5E	Financial promotions	√	√
3.8.8R, 3.8.11R, 3.8.15R	Specific non-real time financial promotions	√ (if the <i>financial promotion</i> relates to a <i>structured deposit</i>)	√ (if the <i>financial promotion</i> relates to a <i>structured deposit</i>)
3.9.6R(1), 3.9.7AR and 3.9.8R	Direct offer financial promotions	√	X
6.1.4R, 6.1.5R, 6.2.2R, 6.4.13R, 6.5.2R(2), 6.5.3R, 6.5.42R	Product disclosure	√	X
6.4.25R	Pre-contract information when entering into a <i>distance contract</i> for <i>accepting deposits</i>	X	√ (<i>distance contract only</i>)
6.4.27R to 6.4.31R	Exemptions for telephone sales; certain other <i>means of distance communication</i> ; and successive operations	√ (<i>distance contract and other telephone sales only</i>)	√ (<i>distance contract only</i>)

6.7.7R(1), 6.7.17R, 6.7.18R, 6.7.21R	Cancellable contracts	X	√ (distance contract only)
6.7.7R(3)	Cancellable contracts	√	X
6.7.10R(2), 6.7.10AR, 6.7.11R	Cancellation period	√	√ (distance contract only)
6.7.42R to 6.7.48R	Exercising the right to cancel	√	√ (distance contract only)
6.7.51R to 6.7.53R	Effects of, and obligations on, cancellation	√	√ (distance contract only)
Note:			
(1) Those <i>rules</i> marked with "X" do not apply; those marked with "√" do apply.			
(2) This Table lists rules imposing obligations. It does not list all application <i>rules</i> , exemptions, transitional <i>rules</i> or <i>guidance</i> .			

Exemption for firms which follow the Banking Code Guidance

1.11.2 R ~~[deleted]~~ (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 ~~[deleted]~~ Table: This table belongs to COB 1.11.2R(2)

(1) COB rules which do not apply	(2) Equivalent provisions of the Banking Code Guidance
COB 2.5 (Exclusion of liability)	[references in the Code which correspond to relevant COB rules to be added when settled]
COB 2.6 (General provisions related to distance contracts)	
COB 3.9.6R(2) and 3.9.8R (Direct offer financial promotions: cash	

deposit ISAs)	
COB 6.1 to 6.5 (Key features)	
COB 6.7 (Cancellation and withdrawal)	

...

- 2.5.1 R (1) This section (~~other than COB 2.5.5R~~) applies to a *firm* that conducts *designated investment business*.
- (2) This section (~~other than COB 2.5.3R and COB 2.5.4R~~) also applies to a *firm* which enters into a *distance contract to accept deposits* with a *retail customer*.

...

Limits on the exclusion of liability: designated investment business

- 2.5.3 R A *firm* must not, in any written or oral communication in connection with *designated investment business*, 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*.
- 2.5.4 R A *firm* must not, in any written or oral communication to a *private customer* in connection with *designated investment business*, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability not referred to in COB 2.5.3R unless it is reasonable for it to do so.

...

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)~~).

...

2.6 General provisions related to distance ~~contracts~~ marketing

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~~;

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

...

Unsolicited services

- 2.6.3 R (1) Subject to *COB 2.6.4R*, a *firm* must not:
- (1a) ~~advise on, arrange, enter into or conduct any designated investment business in relation to a distance contract with~~ supply a service to 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
 - (2b) enforce any obligations against a *retail customer* in the event of unsolicited supplies of such services, the absence of reply not constituting consent.
- (2) Paragraph (1) applies in relation to designated investment business, and accepting deposits, under an organised distance sales or service-provision scheme run by the firm or by an intermediary, who, for the purpose of that supply, makes exclusive use of one or more means of distance communication up to and including the time at which the services are supplied.

...

- 3.2.3 R (1) To the extent that a *financial promotion* relates to:
- (a) a *deposit*; or
 - (b) ...
- only *COB 3.1* to *COB 3.5* and *COB 3.8.4R* to *COB 3.8.6G* and *COB 3.14* apply, unless the *financial promotion* relates to a *cash deposit ISA* in which case *COB 3.9.6R(1)*, *COB 3.9.7AR* and *COB 3.9.8R* also apply; and
- (2) ...

...

- 3.9.3 G Table: Location of the provisions applicable to *direct offer financial promotions*

This table belongs to *COB 3.9.2G*

...
(3) Direct offer financial promotions: general requirements *COB 3.9.6R to COB 3.9.7R*

(3A) Contractual terms and conditions for distance contracts *COB 3.9.7AR*

...
(9) Information to be contained in direct offer financial promotions regarding:

...
(d) ~~cancellation rights~~ EIS or non-packaged products, ISAs or PEPs with no right of withdrawal *COB 3.9.21R to COB 3.9.22G*

...

Cash deposit ISAs

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

...

Authorised professional firms

4.2.3 G ...
(3) the *Distance Marketing Regulations* may apply and require the provision of pre-contractual information in certain circumstances (see *PROF 5.4*).

...

COB 4 Annex 1R

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*

	Exempted type of firm or transaction or event:	Conditions for using the exemption:
(1)	Voice telephony communications	<p>...</p> <p>(b) if the <i>customer</i> gives his explicit consent to receiving only limited information about the <i>terms of business</i>, the <i>firm</i> must in good time before the <i>retail customer</i> is bound by a contract or offer on the telephone, provide the <i>customer</i> with <u>at least</u> the following information:</p> <p>...</p> <p>(c) if the customer does not give his explicit consent to receiving only the limited information in (b), and the parties wish to proceed by telephone, the firm must in good time before the retail customer is bound by a contract or offer on the telephone, provide all of the information required by COB App 1 orally to the customer; and</p> <p>...</p>

...

COB 4 Annex 2E

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

This table belongs to
COB 4.2.11E

A <i>firm's terms of business</i> (including a <i>client agreement</i>) provided to a <i>customer</i> should, where relevant, include some provision about:	
...	
(15)	<i>Customer's</i> understanding of risk When a <i>firm</i> chooses to fulfil its obligations under COB 5.4.3R (Requirement for risk warnings) in the <i>terms of business</i> in relation to any of the following:
	...
	<u>(f) a security or an investment trust savings scheme which satisfies the conditions specified in COB 3.8.9G(6);</u>
	the relevant risk warning.
...	

...

- 5.3.3 G *Firms* are reminded of the requirements of COB 3.9.76R (Direct offer financial promotions: general requirements) a *direct offer financial promotion* must make it clear that, if a *private customer* is in any doubt about the suitability of the agreement which is the subject of the promotion, he should contact the *firm*, or an *independent intermediary* if the *firm* does not offer *advice*.

...

- 6.1.1AB 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*.

...

Quality and production of key features

- 6.1.5 R A *firm* must ensure that any *key features* or information document it produces in relation to a packaged product or cash deposit ISA is in writing, whether in printed hard copy or in electronic format, and:

- (1) ...

...

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* in relation to a packaged product or cash deposit ISA must be provided by the *firm* in a *durable medium*.

...

6.2.7 R When a *firm* sells, *personally recommends* or arranges the sale of a *life policy* to a *private customer*, 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 to COB 6.4.31R* (telephone sales and other exemptions).

...

6.2.12 R ...

(2) If (1)(a) to (c) apply, then, subject to *COB 6.4.27R to COB 6.4.31R* (telephone sales and other exemptions), 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.

...

Variations to existing life policies

6.2.16 R ...

(2) ... ;
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 to COB 6.4.31R* (telephone sales and other exemptions) applies.

...

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 to COB 6.4.31R* (telephone sales and other exemptions) applies. The *firm* must:

(1) ...

...

Schemes

6.2.22 R When a *firm* sells, *personally recommends* or arranges for the sale of

a *scheme* to a *private customer*, unless *COB* 6.2.24R (exceptions) or *COB* 6.4.27R to *COB* 6.4.31R (telephone sales and other exemptions) applies, the *private customer* must be provided with *key features* for the *scheme* before the *private customer* completes an application for the *scheme holding*.

...

Income withdrawals

- 6.4.8 R When a *firm personally recommends*, arranges or effects *income withdrawals* to or for a *private customer*, the *customer* must be provided with *key features* 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~~ or *COB* 6.4.27R to *COB* 6.4.31R (telephone sales and other exemptions) applies.

...

Cash Deposit ISAs

- 6.4.13 R When a *firm* manages, *personally recommends* or sells a *cash deposit ISA* to a *private customer* that *customer* must be provided with the information specified in *COB* 6.5.42R in good time before the *customer* is bound by the transaction, unless *COB* 6.4.27R to *COB* 6.4.31R (telephone sales and other exemptions) applies (~~but see *COB* 1.11.2R (Exemption for firms which follow the Banking Code Guidance)~~)).

...

Stakeholder pension schemes

- 6.4.15 R When a *firm* sells, manages, *personally recommends* or arranges the sale of a *stakeholder pension scheme* to or for a *private customer*, the *firm* must, subject to *COB* 6.4.18R and unless *COB* 6.4.27R to *COB* 6.4.31R (telephone sales and other exemptions) applies, provide the *private customer* with *key features* before the *private customer* completes an application for the *stakeholder pension scheme*.

...

Entering into a distance contract for accepting deposits (other than a cash deposit ISA)

- 6.4.25 R (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*

~~(other than a cash deposit ISA, for which see COB 6.5.42R), unless an exemption in (2), (3), (4) or (5) COB 6.4.27R to COB 6.4.31R (telephone sales and other exemptions) 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 those rules 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 ~~[deleted] 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~~ Exemption: telephone sales

6.4.27 R (1) ...

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

...

(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*.

...

(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*. *Firms* are also reminded that in relation to a stakeholder pension scheme COB 6.4.16R continues to apply.

Exemption: certain other means of distance communication

6.4.29 R This exemption applies where this chapter requires *key features* or other information to be provided in relation to a *distance contract*, if the *distance contract* is concluded at the *customer's* request using a *means of distance communication* (other than telephone) which does not enable provision of the information in a *durable medium* before the *customer* is bound by the contract or offer. In that case, the *firm* must provide *key features* or other information to the *customer* in a *durable medium* immediately after the conclusion of the contract.

Exemption: successive or separate operations under an initial service agreement

6.4.30 R This exemption applies where this chapter requires *key features* or other information to be provided in relation to a *distance contract*, if the *firm* has an initial service agreement with the *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)).

Exemption: other successive or separate operations

6.4.31 R This exemption applies where this chapter requires *key features* or other information to be provided in relation to a *distance contract*, if:

- (1) the *firm* has no initial service agreement with the *customer*;
- (2) the *firm* has performed an operation for the *customer* within the last year; and
- (3) the contract is in relation to a successive operation or separate operation of the same nature (see *COB 1.10.2G (2)*).

...

General

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

- (3) the information document or abbreviated form of *key features* it produces:
 - (a) relating to *friendly society tax exempt policies*, ~~or *traded life policies*~~, ~~or *broker funds*~~, contains the applicable information specified in *COB 6.4.43R-~~COB 6.4.454R~~*;
 - (b) relating to *broker funds* contains the applicable information in *COB 6.4.45R*;
- (4) ...;
- (5) ...; and
- ...
- (6) all:
 - (a) *key features*; and
 - (b) abbreviated *key features* mentioned at *COB 6.5.2R(3)(a)* above.

it produces in relation to a *distance contract* with a *retail customer* include or are accompanied by 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 in good time before the *retail customer* is bound by the contract or offer.

...

6.5.41 G ~~[deleted] *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*).~~

6.5.42 R If *COB 6.4.13R(+)* applies, for a *cash deposit ISA*, the *private customer*

must be given the following 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*:

...

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 the following details ~~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:~~

...

(3) ...; ~~and~~

(4) ...; and

(5) in relation to a *distance contract* with a *retail customer*, all the contractual terms and conditions and the information in *COB* App 1.

...

6.7.2 G *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 89 (Right to cancel) to 1213 (Payment for services provided before cancellation) of the *Distance Marketing Regulations* may apply instead (see regulation 4(53)).

...

6.7.5 G Cancellable investment agreements.
This table belongs to *COB* 6.7.4G

Cancellable investment agreements			
	Post-sale right to cancel?	Pre-sale right to withdraw ?	Maximum period of reflection (but see <i>COB</i> 6.7.11R)

Cancellable investment agreements			
A. Contracts where the right arises regardless of means of sale.			
<i>Appropriate personal pension (APP)</i>	Yes ^{5,6}	No	30 days
<i>Cash deposit ISA</i>	Yes ^{5,6}	No	14 days
<i>Life policy (including pension policy, pension annuity or within ISA)</i>	Yes ^{1,5,6}	No ¹	30 days ²
<i>Personal pension contract</i>	Yes ^{1,5,6}	No ¹	30 days ²
<i>Stakeholder pension scheme (SHP)</i>	Yes ^{1,5,6}	No ¹	30 days ²
<i>Certain variations of existing life policies, pension contracts and SHPs</i>	Yes ^{1,5,6}	No ¹	30 days ²
B. Contracts where the right arises only if advice is given or if sold by distance contract.			
<i>Units in an AUT, recognised scheme or ICVC (within an ISA or PEP)</i> (1) if sold by <i>distance contract</i> ; (2) if sold otherwise with advice	No Yes ⁴	No No ⁴	14 days
<i>ISA or PEP not mentioned in any other row</i> (1) if sold by <i>distance contract</i> (2) if sold otherwise with advice	Yes ^{5,6} No	No Yes ³	14 days 7 days

Cancellable investment agreements			
<i>Units in an AUT, recognised scheme or ICVC (outside an ISA or PEP)</i>			
(1) if sold by <i>distance contract</i>	No	No	
(2) if sold otherwise with advice	Yes	No	14 days
<i>EIS</i>			
(1) if sold by <i>distance contract</i>	Yes ^{5,6}	No	14 days
(2) if sold otherwise with advice	No	Yes ³	7 days
C. Contracts where the right arises for distance contracts only			
<i>Distance contract to accept deposits</i>	Yes ^{5,6}	No	14 days
<i>Distance contract not mentioned in another row the making or performance of which constitutes, or is part of, designated investment business</i>	Yes ^{5,6,7}	No	14 days
Notes:			
1. For a <i>pension annuity</i> or <i>pension transfer</i> (and a relevant variation), the <i>firm</i> can, in certain circumstances, choose to <u>provide the right to cancel, in whole or part, through a 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)).</u> A <i>firm</i> may offer a pre-sale right to withdraw, even where there is no right to cancel.			
2. [Deleted] The period is at least 14 days if the option of pre-sale withdrawal is offered.			
...			

...

Post-sale right to cancel

6.7.7 R A retail customer has a right to cancel:

...

- (3) a contract for a *cash deposit ISA*, unless the right to cancel is disapplied for a *distance contract* by case 15 of row 2 to COB 6.7.17R (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* and *COB 6.7.26AR*.

...

6.7.9 G ...

- (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 row 2 of *COB 6.7.17R* applies to the 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*.

...

Right to cancel a stakeholder pension scheme

- 6.7.12 R (1) A *retail customer* who has entered into a contract for a *stakeholder pension scheme* has a right to cancel, unless the right to cancel is disappplied for a *distance contract* by case 15 of row 2 to *COB 6.7.17R*.

...

Pre-sale right to withdraw

6.7.14 R A *retail customer* has a right to withdraw an offer to enter into:

- (1) an *EIS, ISA* or *PEP*:
- (a) following *advice on investments*;
 - (b) which is not a *distance contract*;
 - (c) unless a right to cancel is offered under *COB 6.7.7R(3)*, *COB 6.7.15R* or *COB 6.7.17R*; and
 - (d) subject to cases 8 and 9 of row 2 *COB 6.7.17R*

~~(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* and subject to cases 8 and 9 of 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 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 row 2, COB 6.7.15R, case 12 of row 2, COB 6.7.17R, COB 6.7.23R (3), or COB 6.7.26AR (2); the~~ to the extent that the right to cancel is provided through a right to withdraw under the procedures ~~are~~ set out in COB 6.7.19R.

6.7.15 R Cancellable contracts and exceptions – life
This table belongs to COB 6.7.7R(1).

Cancellable contracts and exceptions – life	
<i>Long-term insurance contracts</i> which a <i>retail customer</i> has a right to cancel under COB 6.7.7R(1) (subject to row 2):	
...	
Row 2	<p>There is no right to cancel where any one or more of the following cases applies:</p> <p>...</p> <p>4. <i>pension policy</i> or <i>stakeholder pension scheme</i> funded (wholly or in part) from payments derived from:</p> <p>(a) a <i>pension transfer</i>, for which <u>to the extent that</u> the right to cancel is replaced by <u>provided through</u> the right to withdraw (see COB 6.7.14R(2)), using the cancellation substitute in COB 6.7.19R; or</p> <p>...</p> <p>7. <i>pension annuity</i> that is:</p> <p>(a) due to commence within a year and a day of the contract, for which <u>to the extent that</u> the right to cancel is replaced by <u>provided through</u> the right to withdraw (see COB 6.7.14R(2)), using the cancellation substitute in COB 6.7.19R; or</p> <p>...</p>

...

6.7.17 R Cancellable contracts and exceptions – non-life
This table belongs to COB 6.7.7R (1) and COB 6.7.14R (1)

Cancellable contracts and exceptions – non-life	
Contracts which a <i>retail customer</i> has a right to cancel under <i>COB</i> 6.7.7R(1) (subject to row 2):	
...	
Row 2	<p>There is no right to cancel where any one or more of the following cases applies:</p> <p>...</p> <p>12. <i>pension contract</i> or <i>stakeholder pension scheme</i> funded (wholly or in part) from payments derived from a <i>pension transfer</i> for which a <u>to the extent that the right to cancel is replaced by provided through</u> a right to withdraw (see <i>COB</i> 6.7.14R(2)) using the cancellation substitute in <i>COB</i> 6.7.19R;</p> <p>...</p>

6.7.19 R Cancellation substitute

This table belongs to *COB* 6.7.14R(2), cases 4(a) and 7(a) of row 2 to *COB* 6.7.15R, ~~and~~ case 12 of row 2 to *COB* 6.7.17R, *COB* 6.7.23(3) and *COB* 6.7.26A(2).

Cancellation substitute	
The <i>retail customer's</i> right to cancel under <i>COB</i> 6.7.7R(1) or (4) is replaced <u>provided through</u> (see note 2) by the <u>a</u> right to withdraw only if:	
1.	The <i>firm</i> has supplied (or has reasonably relied upon another <i>firm</i> to supply) to the <i>retail customer</i> , at least 30 <u>14</u> 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:
(a)	that the <i>retail customer</i> has that <u>a specified period</u> within which to consider his pension options;
(b)	the dates at which the period begins and ends (which must be, in the case of a <i>pension transfer</i> , before the transfer has been irrevocably effected);
(c)	the pension options available (for example, the <i>open-market option</i> in relation to a <i>pension annuity</i>);
(d)	the steps the <i>retail customer</i> must take in order to exercise a particular pension option;
(e)	that the <i>retail customer</i> is entitled to <i>key features</i> and is advised to check with the <i>firm</i> if it has not been received;
(f)	the cost of any advice given to the <i>retail customer</i> in relation to the transaction; and

Cancellation substitute	
2.	The <i>firm</i> has taken sufficient steps (or has reasonably relied upon the same <i>firm</i> as in 1. to take those steps) to ensure that the <i>customer</i> 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.
Notes:	
1. The notice must be issued separately or feature prominently as part of the application form or <i>suitability letter</i> supplied to the <i>customer</i> .	
2. <u>Where the <i>retail customer's</i> right to cancel is provided through a right to withdraw of less than 30 days, a further right to cancel of at least 30 days less the right to withdraw period must be provided in accordance with these <i>rules</i> so that the total period provided is at least 30 days.</u>	

...

- 6.7.26A R (1) If a *customer* who is an individual varies an existing *pension scheme* by exercising an option to make *income withdrawals*, he has a right to cancel that first variation, ~~unless the right to cancel is replaced by the right to withdraw under (2).~~
- (2) ~~The customer's right to cancel under (1) is replaced by the right to withdraw if the firm follows the procedures in COB 6.7.19R~~
A firm may use the cancellation substitute in COB 6.7.19R in relation to the right to cancel in (1) .

...

Automatic cancellation of an attached distance contract

- 6.7.51A G Regulation ~~41~~12 (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 ~~40~~11, unless the *retail customer* gives notice that cancellation of the main contract is not to operate to cancel the attached contract. So, for example, 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.

Obligations on cancellation

- 6.7.52 R ...

...

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

6.7.54 R Subject to *COB* 6.7.56R, 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 specified in *COB* 6.7.57R.

6.8.12 R ...subject to *COB* 6.8.13 and ~~*COB* 6.8.13A~~ provide the individual with:

...

6.8.13A R ~~[deleted] *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*.~~

Annex B

Amendments to the Client Assets sourcebook

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

2.5.5 E (1) In the case of a *private customer*, the appropriate terms and conditions referred to in *CASS 2.5.4R* include those specified in ~~*COB 4.2.15E(19)*~~ *4 Annex 2E(18)* (Content of terms of business provided to a customer: stock lending).

...

...

2.5.11 G The *stock lending* requirements in ~~*COB 4.2.15E(19)*~~ *4 Annex 2E(18)* also apply to *safe custody investments* held collectively on behalf of a *firm's customers* in any *custody* or settlement system. If the *custody* or settlement system operates an 'automatic' *stock lending* programme, the *firm* should maintain a separate account or be able to demonstrate that it maintains adequate systems to differentiate between the *safe custody investments* of those *customers* who have not consented to *stock lending activity* through that programme from the *designated investments* of those that have consented.

Annex C

Amendments to the Credit Unions sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. The text shown amended is the text in CRED, as amended by the Distance Marketing Directive Instrument 2004 (FSA 2004/39).

...

Exemptions

- 11.4.5 G The exemptions referred to in *CRED* 11.4.3G are set out in *COB* 6.4.~~25~~27R to *COB* 6.4.31R. 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(1) 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.~~25~~27R(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.~~25~~27R(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 (*COB* 6.4.30R to *COB* 6.4.31R; and see *COB* 1.10.2G).
- 11.4.6 G 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.~~

Annex D

Amendments to the Electronic Commerce sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. The text shown amended is the text in ECO, as amended by the Distance Marketing Directive Instrument 2004 (FSA 2004/39).

1.2.45A R ...

...

1.2.5AB R ...

...

1.2.12 E Table: Provision of essential information to consumers in direct offer financial promotions. This table belongs to ECO 1.2.6E(1)(c).

COB rule	Description
COB 3.9.76R(52)(a) , as regards the information in <u>COB App 1.1.1R(6) and (7)</u>	Direct offer financial promotions: particular information required <u>Required information for certain direct offer financial promotions</u>
COB 3.9.12R(1)	Execution-only dealing services
COB 3.9.15R(1)	Investments which can fluctuate in value
COB 3.9.18R	Life policies
COB 3.9.21R(1)(a) <u>3.9.6R(2)(a)</u> , as regards the information in <u>COB App 1.1.1R(17)</u>	Cancellation rights
COB 3.9.21R(1)(c)	Cancellation rights
COB 3.9.23R	Charges for regulated collective investment schemes

Annex E

Amendments to the Professional Firms sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. The text shown amended is the text in PROF, as amended by the Distance Marketing Directive Instrument 2004 (FSA 2004/39).

5.4 Application of the Distance Marketing Regulations

- 5.4.1 R (1) In addition to those provisions of the *Distance Marketing Regulations* which apply directly (see *COB 1.10.7G*), an authorised professional firm must, with respect to its *non-mainstream regulated activities*, comply with regulations ~~67 to 1011~~, ~~14 to 15(2)~~ and ~~16 to 2015~~ 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 ~~67 to 78~~ and ~~14 to 15(2)15~~ 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.

Annex F

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text in the Glossary, as amended by the Distance Marketing Directive Instrument 2004 (FSA 2004/39).

Amend the following definition as shown:

<i>Distance Marketing Regulations</i>	The Financial Services (Distance Marketing) Regulations 2004 (SI 2004/ <u>2095</u>).
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ADDENDUM

DISTANCE MARKETING DIRECTIVE (AMENDMENT) INSTRUMENT 2004

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

Annex A of this instrument is amended as follows:

....

6.1.1BA 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*.

...

...

General

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

- (3) the information document or abbreviated form of *key features* it produces:
 - (a) relating to *friendly society tax exempt policies*, or *traded life policies*, contains the applicable information specified in *COB* ~~6.4.5.43R~~-*COB* ~~6.4.5.44R~~;
 - (b) relating to *broker funds* contains the applicable information in *COB* ~~6.4.5.45R~~;

... ..

...

...

6.7.19 R Cancellation substitute

...

Cancellation substitute
...
Notes:
1. The notice must be issued separately or feature prominently as part of the application form or suitability letter <u>another document</u> supplied to the <i>customer</i> .
...

...