

**WITH-PROFITS FUNDS: PAYMENTS OF COMPENSATION AND REDRESS
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance); and
 - (2) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 July 2009.

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the With-Profits Funds: Payments of Compensation and Redress Instrument 2009.

By order of the Board
23 July 2009

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

20.2 Treating with-profits policyholders fairly

...

Charges to a with-profits fund

- 20.2.23 R A *firm* must only charge costs to a ~~with-profits fund~~ with-profits fund which have been, or will be, incurred in operating the *with-profits fund*. This may include a fair proportion of overheads.
- 20.2.24 R Subject to COBS 20.2.25R, COBS 20.2.25AR and COBS 20.2.25BR, a A *firm* must not pay compensation or redress from a *with-profits fund*, ~~unless the payment is made to a policyholder, or former policyholder, of that with-profits fund.~~
- 20.2.25 R A proprietary firm may pay compensation or redress due to a *policyholder*, or *former policyholder*:
- (1) from assets attributable to shareholders, whether or not they are held within a *long-term insurance fund*; ~~or~~
 - (2) from its *inherited estate* (if any); ~~or~~
 - (3) ~~from assets that would otherwise be attributable to asset shares, if, in the reasonable opinion of the firm's governing body, that compensation or redress cannot be paid from the assets in (1) or (2), or from any other source.~~
- 20.2.25A R A mutual may pay compensation or redress due to a policyholder, or former policyholder, from a with-profits fund, but may only pay from assets that would otherwise be attributable to asset shares if, in the reasonable opinion of the firm's governing body, the compensation or redress cannot be paid from any other assets in the with-profits fund.
- 20.2.25B R A payment or transfer of liabilities made to correct an error and which has the effect of restoring a policyholder, or former policyholder, and the with-profits fund to the position they would have been in if the error had not occurred (a "rectification payment"), is not a payment of compensation or redress for the purposes of COBS 20.2.24R.
- 20.2.25C G Rectification payments may include, for example, a payment to a policyholder or former policyholder to correct an erroneous underpayment of policy proceeds, or a reimbursement of premiums overpaid. The effect of

COBS 20.2.25BR is that a firm may make rectification payments using assets in a with-profits fund.

20.2.25D G COBS TP 2.14R has the effect that payments of compensation and redress arising out of events which took place before 31 July 2009 are subject to COBS 20.2.23R to COBS 20.2.25R as in force at 30 July 2009.

20.2.26 R A proprietary firm must not charge to a with-profits fund any amounts paid or payable to a skilled person in connection with a report under section 166 of the Act (Reports by skilled persons) if the report indicates that the firm has, or may have, materially failed to satisfy its obligations under the ~~regulatory system~~ regulatory system.

Amendments to COBS Transitional Schedules

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
2.9	<u>COBS 20.2.1G – to COBS 20.2.23R; COBS 20.2.26R to COBS 20.2.41G; COBS 20.2.53R - COBS 20.2.60G (Treating with-profits policyholders fairly)</u>	R	The provisions listed in column (2) do not apply to a firm if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the FSA, a previous regulator or a court of competent jurisdiction, on or before 20 January 2005.	From 1 November 2007 indefinitely	1 November 2007
<u>2.9A</u>	<u>COBS 20.2.24R to COBS 20.2.25AR (Charging payments of compensation and redress to a with-profits</u>	<u>R</u>	<u>The provisions listed in column (2) do not apply to a firm if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the FSA, a previous regulator or a court of competent jurisdiction, on or before 31</u>	<u>From 31 July 2009 indefinitely</u>	<u>31 July 2009</u>

	<u>fund)</u>		<u>July 2009.</u>		
...					
<u>2.14</u>	<u>COBS 20.2.24R to COBS 20.2.25AR</u>	<u>R</u>	(1) <u>COBS 20.2.24R to COBS 20.2.25AR have effect in relation to payments of compensation and redress arising out of events occurring on or after 31 July 2009.</u> (2) <u>For payments of compensation and redress arising out of events occurring before 31 July 2009, COBS 20.2.23R to COBS 20.2.25R apply as they were in force on 30 July 2009.</u>	<u>From 31 July 2009 indefinitely</u>	<u>31 July 2009</u>