

CONDUCT OF BUSINESS SOURCEBOOK (MUTUALS) INSTRUMENT 2014

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of its powers under section 139A (Power of the FCA to make guidance) of the Financial Services and Markets Act 2000 (“the Act”).

Commencement

- B. This instrument comes into force on 28 March 2014.

Amendments to the Handbook

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

Citation

- D. This instrument may be cited as the Conduct of Business Sourcebook (Mutuals) Instrument 2014.

By order of the Board of the Financial Conduct Authority

27 March 2014

Annex

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

20.2 Treating with-profits policyholders fairly

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20.2.60 G ...

- (2) Where it is agreed by its *with-profits policyholders*, and subject to meeting the requirements for effecting new *contracts of insurance* in an existing *with-profits fund* (COBS 20.2.28R), a *mutual* may make alternative arrangements for continuing to carry on *non-profit insurance business*, and a *non-directive friendly society* may make alternative arrangements for continuing to carry on non-insurance related business. Where a *mutual* has been granted a *waiver* in accordance with COBS 20.2.61G, the agreement of its *with-profits policyholders* to alternative arrangements for continuing to carry on *non-profit insurance business* may not be needed.

20.2.61 G (1) A *mutual* operating a common fund may seek to undertake an exercise to identify that part of the fund to which the *mutual* considers it would be fair for relevant provisions in COBS 20 not to apply.

(2) To give regulatory effect to the identification exercise, the FCA expects that a *mutual* will need to apply to the FCA to modify the relevant provisions in COBS 20 and elsewhere which are dependent on the definition of the *with-profits fund*.

(3) A *mutual* will need to demonstrate that the appropriate statutory tests in section 138A of the Act are met. The FCA expects that *mutuals* will need to do at least the following to allow the FCA to consider whether granting the modification would adversely affect the advancement of the FCA's consumer protection objective:

(a) demonstrate that the exercise does not amount to a *retribution*;

(b) demonstrate that its proposals are fair to its *with-profits policyholders*, and other relevant *policyholders*, having regard to the *mutual's* own particular structure, origins and other relevant circumstances, and including reference to the items in

(c) to (j) below;

- (c) obtain the report of an independent expert approved by, and whose terms of reference are agreed with, the FCA on the terms of the *mutual's* proposals and the likely impact and effects on, and fairness to, the *mutual's with-profits policyholders* and other relevant *policyholders*. This report should consider whether the *firm* has sufficiently demonstrated the absence of a *retribution* under (a). The FCA will consider using its powers in section 166 of the *Act* (Reports by skilled persons) in appropriate circumstances;
 - (d) demonstrate that the *mutual's with-profits policyholders* and other *policyholders* are appropriately engaged and informed about the proposals;
 - (e) demonstrate that it has complied with the relevant requirements in the *mutual's* constitutional documents, for example that members are appropriately involved in agreeing to any proposals;
 - (f) demonstrate that the *mutual* has a convincing and robust business case for continuing in business, as opposed to run-off;
 - (g) demonstrate how, and the extent to which, continuing membership rights will benefit *with-profits policyholders* and other *policyholders*;
 - (h) explain the nature and terms of any continuing support to be provided to the *with-profits fund* from outside the *with-profits fund*;
 - (i) demonstrate that *with-profits policyholders* under the *mutual's* proposals will not be at a disadvantage compared to equivalent *with-profits policyholders* in a proprietary *with-profits fund*; and
 - (j) explain how it proposes to pay any compensation or redress that is, or may become, due to a *policyholder*, or former *policyholder*.
- (4) For the purposes of (3)(a) and (c), where the issues to be considered by the independent expert include the extent or value (in the particular circumstances of the *mutual*) of the rights and interests of *with-profits policyholders* in the *with-profits fund*, the FCA expects the independent expert's terms of reference to require them to take into account other available analyses of such rights and interests which may be

more favourable to *policyholders* than the *mutual's* own analysis. The *FCA* considers that any uncertainty in the extent or value of such rights and interests in the case of a particular *mutual* may mean that the independent expert will need to obtain their own independent legal advice on the issue. In the *FCA's* view the fact of any uncertainty as to the extent or value of the relevant rights and interests, following receipt of independent legal advice, may itself be taken into account by the independent expert when producing their report. The *FCA* will consider on a case by case basis what further information it may provide to the expert and/or independent legal adviser to ensure that the rights and interests of *policyholders* have been appropriately taken into account.

- (5) The *FCA* expects to consult and/or seek information or advice from the *PRA* in accordance with section 3D of the *Act* and the Memorandum of Understanding between the *FCA* and the *PRA* required by section 3E. As part of any such process the *FCA* expects that the *PRA* will wish to consider, among other things, that balance sheet safety and soundness issues have been identified and addressed appropriately.