

SRA Financial Services (Scope) Rules 2001

These rules, dated 18 July 2001, are made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of schedule 4 to the Legal Services Act 2007, and for the purposes of section 332 of the Financial Services and Markets Act 2000 regulating the practices of:

- **Authorised bodies** and **recognised sole practitioners** in any part of the world,
- **REs** in any part of the United Kingdom, and
- **RFLs** in England and Wales,

in carrying out **regulated activities** in the United Kingdom, for the purposes of the Financial Services and Markets Act 2000.

Part 1: Rules

Rule 1: Purpose

1.1 The Law Society is a designated professional body under Part XX of **FSMA**, and **firms** may therefore carry on certain **regulated activities** without being regulated by the **FCA**, if they can meet the conditions specified in section 327 of **FSMA**. As a designated professional body the Law Society is required to make rules governing the carrying on by **firms** of **regulated activities**. The purpose of these rules is to set out the scope of the **regulated activities** which may be undertaken by **firms** which are not regulated by the **FCA**.

1.2 These rules:

- (a) prohibit firms which are not regulated by the **FCA** from carrying on certain **regulated activities**;
- (b) set out the basic conditions which those **firms** must satisfy when carrying on any **regulated activities**;
- (c) set out other restrictions on **regulated activities** carried on by those **firms**.

Note

- (i) **FSMA** makes the **FCA** and the Prudential Regulation Authority (PRA) the statutory regulators of financial services business. Under **FSMA** anyone carrying on **regulated activities** needs to be regulated by the **FCA**. Part XX of **FSMA** enables **firms** authorised and regulated by the **SRA** to be treated as exempt professional firms and to carry on activities known as exempt regulated activities provided that these **firms** are able to comply with the SRA Financial

Services (Scope) Rules 2001 as these Rules set out the scope of the activities which may be undertaken.

Rule 2: Application

- 2.1 These rules apply only to *firms* which are not regulated by the *FCA*.
- 2.2 Where a *firm* is a *licensed body*, these rules apply only in respect of:
- (a) any *reserved legal activity*;
 - (b) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence;
 - (c) any other activity in respect of which the *licensed body* is regulated pursuant to Part 5 of the *LSA*.

Note

- (i) Any *firm* which undertakes *regulated activities* and cannot comply with the Part XX exemption must be authorised by the *FCA* and comply with the *FCA's* requirements.

Rule 3: Prohibited activities

- 3.1 A *firm* must not carry on, or agree to carry on, any of the following activities:
- (a) *market making* in *investments*;
 - (b) buying, selling, subscribing for or underwriting *investments* as principal where the *firm*:
 - (i) holds itself out as engaging in the business of buying such *investments* with a view to selling them;
 - (ii) holds itself out as engaging in the business of underwriting *investments* of the kind to which the transaction relates; or
 - (iii) regularly solicits members of the public with the purpose of inducing them, as principals or agents, to enter into transactions and the transaction is entered into as a result of the *firm* having solicited members of the public in that manner.
 - (c) buying or selling *investments* with a view to stabilising or maintaining the market price of the *investments*;
 - (d) acting as a *stakeholder pension scheme* manager;
 - (e) entering into a *broker funds arrangement*;
 - (f) effecting and carrying out *contracts of insurance* as principal;
 - (g) establishing, operating or winding up a *collective investment scheme*;

- (h) establishing, operating or winding up a *stakeholder pension scheme* or a *personal pension scheme*;
- (i) managing the underwriting capacity of a Lloyds syndicate as a managing agent at Lloyds;
- (j) advising a person to become a member of a particular Lloyd's syndicate;
- (k) entering as provider into a *funeral plan contract*;
- (l) entering into a *regulated mortgage contract* as lender or administering a *regulated mortgage contract* (unless this is in the *firm's* capacity as a trustee or personal representative and the borrower is a beneficiary under the trust, will or intestacy);
- (m) entering into a *regulated home purchase plan* as provider or administering a *regulated home purchase plan* (unless this is in the *firm's* capacity as a trustee or personal representative and the *home purchaser* is a beneficiary under the trust, will or intestacy);
- (n) entering into a *regulated home reversion plan* as a provider or administering a *regulated home reversion plan* (unless this is in the *firm's* capacity as a trustee or personal representative and the reversion seller is a beneficiary under the trust, will or intestacy);
- (o) entering into a *regulated sale and rent back agreement* as an *agreement provider* or administering a *regulated sale and rent back agreement* (unless this is in the *firm's* capacity as a trustee or personal representative and the *agreement seller* is a beneficiary under the trust, will or intestacy);
- (p) entering into a *regulated credit agreement* as lender except where the *regulated credit agreement* relates exclusively to the payment of *disbursements* or professional fees due to the *firm*;
- (q) exercising, or having the right to exercise, the lender's rights and duties under a *regulated credit agreement* except where the *regulated credit agreement* relates exclusively to the payment of *disbursements* or professional fees due to the *firm*;
- (r) entering into a *regulated consumer hire agreement* as owner;
- (s) exercising, or having the right to exercise, the owner's rights and duties under a *regulated consumer hire agreement*;
- (t) operating an electronic system in relation to lending within the meaning of article 36H of the *Regulated Activities Order*; or
- (u) carrying on the activity of providing credit references within the meaning of article 89B of the *Regulated Activities Order*.

Note

- (i) The Treasury has made the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 which sets out those activities which cannot be provided by professional firms under the Part XX exemption. These activities are also restricted in Rules 3 and 5 of the SRA Financial Services (Scope) Rules 2001.

Rule 4: Basic conditions

4.1 A *firm* which carries on any *regulated activities* must ensure that:

- (a) the activities arise out of, or are complementary to, the provision of a particular *professional service* to a particular *client*;
- (b) the manner of the provision by the *firm* of any service in the course of carrying on the activities is incidental to the provision by the *firm* of *professional services*;
- (c) the *firm* accounts to the *client* for any pecuniary reward or other advantage which the *firm* receives from a third party;
- (d) the activities are not of a description, nor do they relate to an investment of a description, specified in any order made by the Treasury under section 327(6) of *FSMA*;
- (e) the *firm* does not carry on, or hold itself out as carrying on, a *regulated activity* other than one which is allowed by these rules or one in relation to which the firm is an *exempt person*;
- (f) there is not in force any order or direction of the *FCA* under sections 328 or 329 of *FSMA* which prevents the *firm* from carrying on the activities; and
- (g) the activities are not otherwise prohibited by these rules.

Notes

- (i) In order to comply with rule 4(a) you must ensure that the *regulated activity* in question arises out of, or is complementary to, other *professional services* to a particular *client*. The effect of this is that it is not possible to undertake a *regulated activity* in isolation for a *client*.
- (ii) In order to comply with rule 4(b) the exempt *regulated activities* cannot be a major part of the practice of the *firm*. The *FCA* considers that the following factors are relevant to this: the scale of *regulated activity* in proportion to other *professional services* provided; whether and to what extent activities that are *regulated activities* are held out as separate services; and the impression given of how the *firm* provides *regulated activities*, for example through its advertising or other promotion of its services.
- (iii) In order to comply with rule 4(c) you must account for any commission or other *financial benefit* to the *client*. Accounting to

the *client* does not mean simply telling the *client* that the *firm* will receive commission. It means that the commission etc must be held to the order of the *client* and the *client* gives you informed consent to keep it. To comply with the rule you should, in advance of the arrangement and/or provision of the third party financial service:

- (a) inform the *client* of their rights to any commission etc;
- (b) inform the *client* that the arrangement and/or provision of the service is not dependant on their agreement to waive their right to any commission etc;
- (c) seek and record agreement from the *client* as to whether any commission etc should be passed to the *client*, retained by the *firm* to offset client fees, or retained by the *firm* with the *client* waiving their right to it.

Rule 5: Other restrictions

5.1 Retail investment products (except personal pension schemes)

- (a) A *firm* must not recommend, or make arrangements for, a *client* to buy a *retail investment product* except where:
 - (i) recommending, or arranging for, a *client* to buy a *retail investment product* by means of an assignment;
 - (ii) the arrangements are made as a result of a *firm* managing assets within the exception to rule 5(4) below; or
 - (iii) arranging a transaction for a *client* where the *firm* assumes on reasonable grounds that the *client* is not relying on the *firm* as to the merits or suitability of that *transaction*.

5.2 Personal pension schemes

- (a) A *firm* must not recommend a *client* to buy or dispose of any rights or interests in a *personal pension scheme*.
- (b) A *firm* must not make arrangements for a *client* to buy any rights or interests in a *personal pension scheme* except where the *firm* assumes on reasonable grounds that the *client* is not relying on the *firm* as to the merits or suitability of that *transaction* but this exception does not apply where the *transaction* involves:
 - (i) a *pension transfer*; or
 - (ii) an *opt-out*.

5.3 Securities and *contractually based investments* (except *retail investment products*)

- (a) A **firm** must not recommend a **client** to buy or subscribe for a **security** or a **contractually based investment** where the **transaction** would be made:
 - (i) with a person acting in the course of carrying on the business of buying, selling, subscribing for or underwriting the **investment**, whether as principal or agent;
 - (ii) on an investment exchange or any other market to which that **investment** is admitted for dealing; or
 - (iii) in response to an invitation to subscribe for an **investment** which is, or is to be, admitted for dealing on an investment exchange or any other market.
- (b) This rule does not apply where the **client** is:
 - (i) not an individual;
 - (ii) an individual who acts in connection with the carrying on of a business of any kind by himself or by an undertaking of which the **client** is, or would become as a result of the **transaction** to which the recommendation relates, a **controller**; or
 - (iii) acting in his capacity as a trustee of an **occupational pension scheme**.

5.4 Discretionary management

- (a) A **firm** must not manage assets belonging to another person in circumstances which involve the exercise of discretion except where the **firm** or a **manager** or **employee** of the **firm** is a trustee, personal representative, donee of a power of attorney or receiver appointed by the Court of Protection, and either:
 - (i) all routine or day to day decisions, so far as relating to that activity, are taken by an **authorised person** with permission to carry on that activity or an **exempt person**; or
 - (ii) any decision to enter into a **transaction**, which involves buying or subscribing for an **investment**, is undertaken in accordance with the advice of an **authorised person** with permission to give advice in relation to such an activity or an **exempt person**.

5.5 Corporate finance

- (a) A **firm** must not act as any of the following:
 - (i) sponsor to an issue in respect of **securities** to be admitted for dealing on the London Stock Exchange; or

- (ii) nominated adviser to an issue in respect of **securities** to be admitted for dealing on the Alternative Investment Market of the London Stock Exchange; or
- (iii) corporate adviser to an issue in respect of **securities** to be admitted for dealing on the PLUS Market.

5.6 Insurance ~~distribution~~mediation activities

- (a) ~~A firm must not~~ ~~Unless a firm is registered in the Financial Services Register it must not~~ carry on any **insurance distribution**mediation activities ~~unless the firm:~~
 - (i) ~~is registered in the Financial Services Register, and~~
 - ~~(+)(ii)~~ ~~has appointed an insurance distribution officer who will be responsible for the~~ ~~firm's insurance distribution activities.~~
- (b) ~~If a~~Any firm is carrying on~~undertaking, or proposing to carry on,~~ **insurance distribution**mediation activities it must ~~notify the SRA in the prescribed form.~~
- (c) ~~The SRA may give the FCA any of the information collected on the prescribed form and the firm must notify the SRA of any changes to this information or to any information about the firm that appears on the Financial Services Register.~~
- ~~(b)(d)~~ Rule 5.6(b) does not apply to a **firm** that has been registered in the **Financial Services Register** and was able to carry on insurance mediation activities before 23 February 2018.-

5.7 Regulated mortgage contracts

- (a) A **firm** must not recommend a **client** to enter as borrower into a **regulated mortgage contract** but can endorse a recommendation given by an **authorised person** with permission to advise on **regulated mortgage contracts** or an **exempt person** in relation to the giving of such advice.

5.8 Regulated home purchase plans

- (a) A **firm** must not recommend a **client** to enter as **home purchaser** into a **regulated home purchase plan** with a particular person but can endorse a recommendation given by an **authorised person** with permission to advise on **regulated home purchase plans** or an **exempt person** in relation to the giving of such advice.

5.9 Regulated home reversion plans

- (a) A **firm** must not recommend a **client** to enter as **reversion seller** or **plan provider** into a **regulated home reversion plan** with a particular person but can endorse a recommendation given by an **authorised person** with

permission to advise on *regulated home reversion plans* or an *exempt person* in relation to the giving of such advice.

5.10 Regulated sale and rent back agreements

- (a) A *firm* must not recommend a *client* to enter as *agreement seller* or *agreement provider* into a *regulated sale and rent back agreement* with a particular person but can endorse a recommendation given by an *authorised person* with permission to advise on *regulated sale and rent back agreements* or an *exempt person* in relation to the giving of such advice.

5.11 Credit-related regulated activities

- (a) A *firm* must not enter into any transaction with a *client* in which it:
- (i) provides the *client* with credit card cheques, a credit or store card, *credit tokens*, *running account credit*, a current account or *high-cost short-term credit*;
 - (ii) holds a *continuous payment authority* over the client's account; or
 - (iii) takes any article from the *client* in *pledge* or *pawn* as security for the transaction.
- (b) A *firm* must not:
- (i) enter into a *regulated credit agreement* as lender; or
 - (ii) exercise, or have the right to exercise, the lender's rights and duties under a *regulated credit agreement*,
- which is secured on land by a *legal or equitable mortgage*.
- (c) A *firm* must not:
- (i) enter into a *regulated credit agreement* as lender; or
 - (ii) exercise, or have the right to exercise, the lender's rights and duties under a *regulated credit agreement*,
- which includes a variable rate of interest.
- (d) A *firm* must not provide a *debt management plan* to a *client*.
- (e) A *firm* must not charge a separate fee for, or attribute any element of the *firm's* fees to, *credit broking* services.

Note

- ~~(i) A *firm* which relies on the Part XX exemption cannot carry on *insurance mediation activities* unless they are on the *FCA's Exempt Professional Firms (EPF) Register* and appoint an~~

~~**insurance mediation officer.** Firms wishing to be on this Register should notify the **SRA** (contactcentre@sra.org.uk and 0370 606 2555) and provide details of their **insurance mediation officer**. The EPF Register can be accessed on the **FCA** website – see www.fca.org.uk.~~

Rule 6: Effect of a breach of these rules

- 6.1 The **SRA** may exercise its statutory powers in respect of any **firm** which breaches these rules.
- 6.2 In determining whether or not there has been a breach of these rules the **SRA** will take account of whether the **firm** has given due regard to the guidance issued by the Law Society or the **SRA** on how to determine whether **regulated activities** are carried on in accordance with these rules.
- 6.3 A **firm** which breaches these rules may:
- (a) be committing a criminal offence under section 23 of **FSMA**; and
 - (b) be made subject to an order by the **FCA** under section 329 of **FSMA** which could prevent the **firm** from carrying on any **regulated activities**.

Part 2: Repeal, commencement and transitional provisions

Rule 7: Repeal, commencement and transitional provisions

- 7.1 These rules repeal the Solicitors' Investment Business Rules 1995.
- 7.2 These rules come into force on 1 December 2001.
- 7.3 [Deleted]
- ~~7.4 The rules shall not apply to licensed bodies until such time as the Law Society is designated as a licensing authority under Part 1 of Schedule 10 to the Legal Services Act 2007 and all definitions shall be construed accordingly.~~
- ~~7.5 In these rules references in the preamble to the Rules being made under section 83 of the Legal Services Act 2007 shall have no effect until the Law Society is designated as a licensing authority under Part 1 to Schedule 10 of the Legal Services Act 2007.~~

Rule 8: Interpretation

- 8.1 The SRA Handbook Glossary 2012 shall apply and, unless the context otherwise requires:
- (a) all italicised terms shall be defined; and
 - (b) all terms shall be interpreted,
- in accordance with the **Glossary**.

- 8.2 In these rules references to statutes, rules, codes or regulations, statements or principles etc other than these rules include any modification or replacement thereof.
- 8.3 As the context requires, other words and expressions shall have the meanings assigned to them by the Interpretation Act 1978, *FSMA* and the *SA*.
- 8.4 References in these rules to activities carried on by a *firm* include activities carried on by an individual as sole principal, *manager* or *employee* of the *firm*.

SRA Financial Services (Conduct of Business) Rules 2001

These rules, dated 18 July 2001, are made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of schedule 4 to the Legal Services Act 2007, regulating the practices of:

- *Authorised bodies* and *recognised sole practitioners* in any part of the world,
- *REs* in any part of the United Kingdom, and
- *RFLs* in England and Wales,

in carrying out *regulated activities* in the United Kingdom, for the purposes of the Financial Services and Markets Act 2000.

Part 1: Rules

Rule 1: Purpose

- 1.1 The Law Society is a designated professional body under *Part XX* of *FSMA*, and firms may therefore carry on certain *regulated activities* without being regulated by the *FCA*.
- 1.2 The SRA Financial Services (Scope) Rules 2001 set out the scope of the regulated activities which may be undertaken by *firms* which are not regulated by the *FCA*. These rules regulate the way in which *firms* carry on such exempt *regulated activities*.

Rule 2: Application

- 2.1 Where a *firm* is a licensed body, these rules apply only in respect of:
 - (a) any *reserved legal activity*;
 - (b) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence;
 - (c) any other activity in respect of which the *licensed body* is regulated pursuant to Part 5 of the *LSA*.
- 2.2 Apart from rule 3 (status disclosure), these rules apply to:
 - (a) *firms* which are not regulated by the *FCA*; and

- (b) *firms* which are regulated by the *FCA* but these rules only apply to such *firms* in respect of their *non-mainstream regulated activities*.

Rule 3: Status disclosure

- 3.1 This rule applies only to *firms* which are not regulated by the *FCA*.
- 3.2 A *firm* shall give the *client* the following information in writing in a manner that is clear, fair and not misleading before the *firm* provides a service which includes the carrying on of a *regulated activity*:
- (a) a statement that the *firm* is not authorised by the *FCA*;
- (b) the name and address of the *firm*;
- (c) the nature of the regulated activities carried on by the *firm*, and the fact that they are limited in scope;
- (d) a statement that the *firm* is authorised and regulated by the Solicitors Regulation Authority; and
- (e) a statement explaining that complaints and redress mechanisms are provided through the Solicitors Regulation Authority and the Legal Ombudsman;
- 3.3 Before a *firm* provides a service which includes the carrying on of an *insurance mediation-distribution activity* with or for a *client*, it must state that it is an insurance distributor and make the following statement in writing to the *client* in a way that is clear, fair and not misleading:

"[This firm is]/ [We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance ~~mediation-distribution~~ activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business is regulated by the Solicitors Regulation Authority, including –and arrangements for complaints or redress if something goes wrong, are subject to the jurisdiction of the Legal Ombudsman ~~is regulated by Solicitors Regulation Authority~~. The register can be accessed –via– the Financial Conduct Authority website at www.fca.org.uk/firms/financial-services-register."

Notes

- (i) Where the status disclosure relates to *insurance mediation-distribution activities* then the statement in rule 3(3) must be used. The status disclosure need not be tailored to the needs of the individual *client*. The disclosures may be provided alongside or integrated with other material provided to the *client*. These disclosures may be made in the *firm's* client care letter or in a separate letter.
- (ii) Outcome (8.5) in Chapter 8 of the SRA Code of Conduct is that your letterhead, website and e-mails must show the words "authorised and regulated by the Solicitors Regulation Authority" which will assist in meeting the requirements of rule 3(2).
- (iii) The provisions of rule 3(2)(d) and rule 3(3) reflect the requirements of the outcomes in Chapter 1 of the SRA Code of Conduct in respect of complaints handling.

Rule 4: Execution of transactions

- 4.1 A *firm* shall ensure that where it has agreed or decided in its discretion to effect a *transaction*, it shall do so as soon as possible, unless it reasonably believes that it is in the *client's* best interests not to do so.

Note

- (i) Principle 4 sets out your duty to act in the best interests of the *client*. Accordingly, in cases where there is any doubt on the point, *firms* should ensure that transactions are effected on the best terms reasonably available.

Rule 5: Records of transactions

- 5.1 Where a *firm* receives instructions from a *client* to effect a *transaction*, or makes a decision to effect a *transaction* in its discretion, it shall keep a record of:

- (a) the name of the *client*;
- (b) the terms of the instructions or decision; and
- (c) in the case of instructions, the date when they were received.

- 5.2 Where a *firm* gives instructions to another person to effect a *transaction*, it shall keep a record of:

- (a) the name of the *client*;
- (b) the terms of the instructions;
- (c) the date when the instructions were given; and
- (d) the name of the other person instructed.

Note

- (i) It is not necessary for the *firm* to make a separate record. Normal file notes or letters on the file will meet the requirements of this rule provided that they include the appropriate information. If instructions are given or received over the telephone, an appropriate attendance note would satisfy this rule.

Rule 6: Record of commissions

- 6.1 Where a *firm* receives commission which is attributable to *regulated activities* carried on by the *firm*, it shall keep a record of:

- (a) the amount of the commission; and
- (b) how the *firm* has accounted to the *client*.

Notes

- (i) Any financial benefit has to be dealt with in accordance with Outcome (1.15) in Chapter 1 of the SRA Code of Conduct. However, *firms* should bear in mind that in the case of commissions attributable to regulated activities, *firms* must also comply with the requirements of the SRA Financial Services (Scope) Rules 2001, rule 4 (c).
- (ii) The record could be a letter or bill of costs provided the information is clear.

Rule 7: Safekeeping of clients' investments

- 7.1 Where a *firm* undertakes the regulated activity of safeguarding and administering investments, the *firm* must operate appropriate systems, including the keeping of appropriate records, which provide for the safekeeping of assets entrusted to the *firm* by clients and others.
- 7.2 Where such assets are passed to a third party:
 - (a) an acknowledgement of receipt of the property should be obtained; and
 - (b) if they have been passed to a third party on the *client's* instructions, such instructions should be obtained in writing.

Rule 8: Packaged products - execution-only business

- 8.1 If a *firm* arranges for a *client* on an execution-only basis any transaction involving a *retail investment product*, the *firm* shall send the *client* written confirmation to the effect that:
 - (a) the *client* had not sought and was not given any advice from the *firm* in connection with the *transaction*; or
 - (b) the *client* was given advice from the *firm* in connection with that *transaction* but nevertheless persisted in wishing the *transaction* to be effected; and in either case the *transaction* is effected on the *client's* explicit instructions.

Rule 9: Insurance ~~mediation-distribution~~ activities

- 9.1 Where a *firm* undertakes *insurance ~~mediation-distribution~~ activities* for a *client*, it must comply with appendix 1 to these rules.

Rule 9A: Credit-related regulated activities

- 9A.1 Where a firm undertakes *credit-related regulated activities*, it must comply with appendix 2 to these rules.

Rule 10: Retention of records

- 10.1 Each record made under these rules shall be kept for at least six years.

Note

- (i) The six years shall run from the date on which the relevant record has been made.

Rule 11: Waivers

11.1 In any particular case or cases the SRA shall have power to waive in writing any of the provisions of these rules, but shall not do so unless it appears that:

- (a) compliance with them would be unduly burdensome having regard to the benefit which compliance would confer on *clients* or third parties; and
- (b) the exercise of the power would not result in any undue risk to *clients* or third parties.

Note

- (i) For the avoidance of doubt, the SRA will not waive rules that implement any of the requirements of ~~Directive 2002/92/EC on Insurance Mediation Directive (EU) 2016/97 on insurance distribution~~ the or Directive 2008/48/EC on credit agreements for consumers. See also the SRA's Waivers policy [ies](#).

11.2 The SRA shall have power to revoke any waiver.

Rule 12: Commencement

12.1 These rules come into force on 1 December 2001.

12.2 [Deleted]

~~12.3~~

~~These rules shall not apply to licensed bodies until such time as the Law Society is designated as a licensing authority under Part 1 of Schedule 10 to the Legal Services Act 2007 and all definitions shall be construed accordingly.~~

~~12.4~~

~~In these rules references in the preamble to the Rules being made under section 83 of the Legal Services Act 2007 shall have no effect until the Law Society is designated as a licensing authority under Part 1 of Schedule 10 to the Legal Services Act 2007.~~

Rule 13: Interpretation

13.1 The SRA Handbook Glossary 2012 shall apply and, unless the context otherwise requires:

- (a) all italicised terms shall be defined; and
- (b) all terms shall be interpreted,

in accordance with the Glossary.

Notes

- (i) Whether a **transaction** is execution-only will depend on the existing relationship between the **client** and the **firm** and the circumstances surrounding that **transaction**. Generally, a **transaction** will be execution-only if the **client** instructs the **firm** to effect it without having received advice from the firm. Even though this is the case, however, the **transaction** may still not qualify as execution-only because, in view of the relationship, the **client** may reasonably expect the firm to indicate if the transaction is inappropriate. In any event, a **firm** may be negligent (and possibly in breach of Principle 4) if it fails to advise on the appropriateness or otherwise.
- (ii) A **transaction** will also be execution-only if the **firm** has advised the **client** that the **transaction** is unsuitable, but the **client** persists in wishing the **transaction** to be carried out. In those circumstances, it is good practice (and in some cases a requirement) for the **firm** to confirm in writing that its advice has not been accepted, and that the **transaction** is being effected on an execution-only basis.
- (iii) Where the **transaction** involves a **retail investment product**, there is a specific requirement to confirm in writing the execution-only nature of a **transaction** (see Rule 8 above).

13.2 These rules are to be interpreted in the light of the notes.

Part 2: APPENDICES

APPENDIX 1: Insurance Distribution Activities

1 Communication and disclosure

- 1.1 A **firm** must ensure that, in relation to **insurance distribution**:
- (a) it communicates all information, including marketing communications, in a way that is clear, fair and not misleading.
 - (b) its marketing communications are always clearly identifiable as such.

2 General information to be provided

- 2.1 In good time before the conclusion of a **contract of insurance**, a **firm** must disclose the following information to **clients**:
- (a) whether the **firm** provides a **personal recommendation** about the insurance products offered;
 - (b) the procedures allowing **clients** and other interested parties to register complaints about the **firm** and information about the out-of-court complaint and redress procedures available for the settlement of disputes between the **firm** and its **clients**;
 - (c) whether the **firm** is representing the **client** or acting for and on behalf of the **insurer**;

- (d) whether the *firm* has a direct or indirect holding representing 10% or more of the voting rights or capital in a relevant *insurance undertaking*;
- (e) whether a given *insurance undertaking* or its parent undertaking has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*.

3 Scope of service

3.1 Where a *firm* proposes, or gives a *client* a *personal recommendation* for, a *contract of insurance*, then in good time before the conclusion of an initial *contract of insurance* and if necessary on its amendment or renewal, the *firm* must provide the *client* with information on whether the *firm*:

- (a) gives a *personal recommendation* on the basis of a fair and personal analysis;
- (b) is under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings*, in which case the *firm* must provide the names of those *insurance undertakings*; or
- (c) is not under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair and personal analysis, in which case the *firm* must provide the names of the *insurance undertakings* with which the *firm* may and does conduct business.

3.2 If a *firm* informs a *client* that it gives a *personal recommendation* on the basis of a fair and personal analysis:

- (a) it must give that *personal recommendation* on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make that recommendation; and
- (b) that *personal recommendation* must be in accordance with professional criteria regarding which *contract of insurance* would be adequate to meet the *client's* needs.

4 Demands and Needs

4.1 Prior to the conclusion of a *contract of insurance*, a *firm* must specify on the basis of information obtained from the *client*, the demands and needs of that *client*.

4.2 The details must be adapted according to the complexity of the *contract of insurance* proposed and the individual circumstances of the *client*.

4.3 A *firm* must give the *client* a statement of the *client's* demands and needs prior to the conclusion of a *contract of insurance*.

4.4 Any *contract of insurance* proposed by the *firm* must be consistent with the *client's* demands and needs and where the *firm* has given a *personal*

recommendation to the *client*, the *firm* must, in addition to the statement of the demands and needs, provide the *client* with a personalised explanation of why a particular *contract of insurance* would best meet the *client's* demands and needs.

5 Use of intermediaries

5.1 A *firm* must not use, or propose to use, the services of another person consisting of:

- (a) *insurance distribution*;
- (b) *reinsurance distribution*;
- (c) *insurance distribution activity*; or
- (d) *home finance mediation activity*;

unless the person in relation to the activity is:

- (i) registered in an *EEA* State for the purposes of the *IDD*; or
- (ii) in relation to *insurance distribution activity*, is not carrying this activity on in the *EEA*

5.2 Before using the services of the intermediary, a *firm* must check:

- (a) the *Financial Services Register*; or
- (b) in relation to *insurance distribution* or *reinsurance distribution* carried on by an *EEA* firm, the register of its home state regulator,

and use the services of that person only if the relevant register indicates that the person is registered for that purpose.

6 Treating complaints fairly

6.1 In addition to the *firm's* obligations under O(1.9) and O(1.10) of the *SRA Code of Conduct*, the *firm* must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not a *client*.

7 Remuneration and the client's best interests

7.1 A *firm* must not:

- (a) be *remunerated*; or
- (b) *remunerate* or assess the performance of its *employees*;

in a way that conflicts with their duty to act in each *client's* best interest.

7.2 In particular, a *firm* must not make any arrangement by way of *remuneration*, sales target or otherwise that could provide an incentive to the *firm* or its *employees* to recommend a particular *contract of insurance* to a *client* when it could offer a different *contract of insurance* which would better meet its *client's* needs

8 Remuneration disclosure

- 8.1 In good time before the conclusion of the initial *contract of insurance* and if necessary, on its amendment or renewal, a *firm* must provide the *client* with information:
- (a) on the nature of the *remuneration* received in relation to the *insurance contract*;
 - (b) about whether in relation to the contract the *firm* works on the basis of:
 - (i) a fee, that is *remuneration* paid directly by the *client*;
 - (ii) a commission of any kind, that is *remuneration* included in the premium;
 - (iii) any other type of *remuneration*, including an economic benefit of any kind offered or given in connection with the contract; or
 - (iv) a combination of any type of *remuneration* set out above in (i), (ii) and (iii).

9 Fee disclosure: additional requirements

- 9.1 Where a fee is payable, a *firm* must inform the *client* of the amount of the fee before the *client* incurs liability to pay the fee, or before conclusion of the *contract of insurance*, whichever is earlier.
- 9.2 To the extent that it is not possible for the amount in paragraph 9.1 to be given, a *firm* must give the *client* the basis for its calculation.
- 9.3 This paragraph applies to all such fees that may be charged during the life of the *policy*.

10 Means of communication to clients

- 10.1 This paragraph applies to all information required to be provided to a *client* in this appendix.
- 10.2 A *firm* must communicate information to the *client* on paper or using any of the following means:
- (a) a *durable medium* other than paper where the following conditions are satisfied:
 - (i) the use of a *durable medium* other than paper is appropriate in the context of the business conducted between the *firm* and the *client*; and
 - (ii) the *client* has been given the choice between information on paper and on a *durable medium* other than paper and has chosen a *durable medium* other than paper; or

- (b) on a website (where it does not constitute a *durable medium*) where the following conditions are satisfied:
 - (i) the provision of that information by means of a website is appropriate in the context of the business conducted between the *firm* and the *client*;
 - (ii) the *client* has consented to the provision of that information by means of a website;
 - (iii) the *client* has been notified electronically of the address of the website, and the place on the website where that information can be accessed; and
 - (iv) the *firm* ensures that the information remains accessible on the website for such period of time as the *client* may reasonably need to consult it.

10.3 A *firm* must communicate the information:

- (a) in a clear and accurate manner, comprehensible to the *client*;
- (b) in an official language of the Member State in which the insured risk, or proposed insured risk, is situated or in any other language agreed upon by the parties; and
- (c) free of charge.

10.4 Where a *firm* communicates the information using a *durable medium* other than paper or by means of a website, the *firm* must, upon request and free of charge, send the *client* a paper copy of the information.

10.5 A *firm* must ensure that a *client's* choice or consent to receive the information by means of a website (whether a *durable medium* or where the conditions under paragraph 10.2(b) are satisfied) is an active and informed choice or consent.

11 Cross-Selling requirements where insurance is the ancillary product

11.1 When a *firm* offers an insurance product ancillary to and as part of a package or in the same agreement with a non-insurance product or service, it must offer the *client* the option of buying the non-insurance goods or services separately.

11.2 Rule 11.1 does not apply where the non-insurance product or service is any of the following:

- (a) investment service or activities; or
- (b) a *credit agreement* as defined in point 3 of article 4 of the *MCD* which is:
 - (i) an *MCD credit agreement*;
 - (ii) an exempt *MCD credit agreement*;
 - (iii) a *CBTL credit agreement*; or

- (iv) a **credit agreement** referred to in articles 72G(3B) and (4) of the **Regulated Activities Order**;
- (c) a payment account as defined in point 3 of Article 2 of Directive 2014/92/EU.

12 Professional and organisational requirements

12.1 A **firm** must ensure that:

- (a) the **firm** and each relevant **employee** possesses appropriate knowledge and ability in order to complete their tasks and perform duties adequately; and
- (b) that all the persons in its management structure and any staff directly involved in **insurance distribution activities** are of good repute.

12.2 In considering a person's good repute, the **firm** must as a minimum ensure that the person:

- (a) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
- (b) has not previously been declared bankrupt

unless they have been rehabilitated in accordance with national law.

13 Insurance Product Information Document and appropriate information

13.1 A **firm** must ensure that the **client** is given objective and relevant information about a **policy** in good time prior to the conclusion of the **policy**, so that the **client** can make an informed decision.

13.2 A **firm** must provide the information in paragraph 13.1 to the **client**:

- (a) whether or not it gives a **personal recommendation**; and
- (b) irrespective of the fact that the **policy** is offered as part of a package with:
 - (i) a non-insurance product or service; or
 - (ii) another **policy**.

13.3 A **firm** must ensure that the level of information provided takes into account the complexity of the **policy** and the individual circumstances of the **client**.

13.4 When dealing with a **client** who is an individual and who is acting for purposes which are outside his trade or profession the information provided under paragraph 13.1 must include an **Insurance Product Information Document**.

13.5 A **firm** must provide the information required in paragraph 13.4 by way of an **Insurance Product Information Document** for each **policy** (other than a pure protection contract).

13.6 Where a **firm** distributes **contracts of insurance**, it must have in place adequate arrangements to:

- (a) obtain from the manufacturer of the *contract of insurance*:
 - (i) all appropriate information on the *contract of insurance* and the product approval process; and
 - (ii) the identified target market of the *contract of insurance*; and
- (b) understand the characteristics and the identified target market of each *contract of insurance*.

14 Exclusions for large risks

14.1 Only paragraphs 1, 5, 6, 10, 11, 12 and 14 of this appendix apply where a *firm* carries on *insurance distribution activities* for commercial *clients* in relation to *contracts of insurance* covering risks within the following categories:

- (a) railway rolling stock, aircraft, ships (sea, lake, river and canal vessels), goods in transit, aircraft liability and liability of ships (sea, lake, river and canal vessels);
- (b) credit and suretyship, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;
- (c) land vehicles (other than railway rolling stock), fire and natural forces, other damage to property, motor vehicle liability, general liability, and miscellaneous financial loss, in so far as the policyholder exceeds the limits of at least two of the following three criteria:
 - (i) balance sheet total: €6.2 million;
 - (ii) net turnover: €12.8 million;
 - (iii) average number of employees during the financial year: 250

APPENDIX 2: Credit-related Regulated Activities

1 Disclosure of information

- (a) Where a *firm* undertakes *credit-related regulated activities* for a *client*, it must ensure that information in connection with such activities and any agreements to which they relate is communicated to the *client* in a way that is clear, fair and not misleading.
- (b) Where a *firm* carries on the activity of *credit broking*, it must indicate in any advertising and documentation intended for consumers or *clients* the extent and scope of its *credit broking* activities, in particular whether the firm works exclusively with one or more lenders or as an independent broker.

2 Regulated credit agreements

- (a) Where a *firm* carries on a *credit-related regulated activity* involving a proposed *regulated credit agreement*, it must;

- (i) provide adequate explanations to the *client* in order to enable the *client* to assess whether the proposed *regulated credit agreement* is suitable to the *client's* needs and financial situation; and
 - (ii) when providing such explanations, comply with the requirements of Article 5(6) of the Directive 2008/48/EC on credit agreements for consumers.
- (b) Before entering into a *regulated credit agreement* as lender, the *firm* must assess the *client's* creditworthiness on the basis of sufficient information to enable the *firm* to make the assessment, where appropriate such information will be obtained from the *client* and, where necessary, from a credit reference agency.
- (c) After entering into a *regulated credit agreement* where a *firm* is the lender, if the parties agree to change the total amount of credit, the *firm* must update the financial information the *firm* holds concerning the client and assess the *client's* creditworthiness before any significant increase in the total amount of credit.
- (d) In the event of a *firm* assigning to a third party its rights as lender in relation to a *regulated credit agreement*, the *firm* must inform the *client* of the assignment.

3 Appropriation of payments

Where a *firm* is entitled to payments from the same *client* in respect of two or more *regulated credit agreements*, the *firm* must allow the *client* to put any payments made, in respect of those agreements, towards the satisfaction of the sum due under any one or more of the agreements in such proportions as the *client* thinks fit.

4 Consumer Credit Guidance

Where a *firm* undertakes *credit-related regulated activities*, it must have regard to any guidance issued by the *SRA* from time to time relating to such activities.

New Defined terms for the SRA Handbook Glossary 2012

New term in the COB Rules	Definition
CBTL credit agreement	has the meaning given in the <i>FCA Handbook</i> .
durable medium	<p>means any instrument which:</p> <ul style="list-style-type: none"> (a) enables the recipient to store information personally addressed to them in a way accessible for future reference and for a period of time adequate for the purposes of the information; and (b) allows the unchanged reproduction of the information stored.
home finance mediation activity	has the meaning given in the <i>FCA Handbook</i> .
IDD	means Directive (EU) 2016/97 on insurance distribution.
insurance distribution	has the meaning given in the <i>FCA Handbook</i> .
insurance distribution activities	<p>means any of the following regulated activities as specified in the <i>Regulated Activities Order</i> which are carried on in relation to a <i>contract of insurance</i> or rights to or interests in a <i>life policy</i>:</p> <ul style="list-style-type: none"> (a) dealing in investments as agent (article 21) (b) arranging (bringing about) deals in investments (article 25(1)) (c) making arrangements with a view to transactions in investments (article 25(2)) (d) assisting in the administration and performance of a contract of insurance (article 39A) (e) advising on investments (except peer to peer agreements) (article 53(1)) (f) agreeing to carry on a regulated activity in (a) to (e) above (article 64).
insurance distributor	means an insurance intermediary, ancillary insurance intermediary or insurance undertaking within the meaning of the <i>IDD</i> .
Insurance Product Information Document	means a document that meets the requirements of Article 20(5) to Article 20(8) of the <i>IDD</i> .
MCD	means the Mortgage Credit Directive - Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property.

New Defined terms for the SRA Handbook Glossary 2012

MCD credit agreement	has the meaning given in the <i>FCA</i> Handbook.
personal recommendation	means a recommendation that is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.
reinsurance distribution	has the meaning given in Article 2(1)(2) and Article 2(2) of the <i>IDD</i> .
remuneration	means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of <i>insurance distribution activities</i> and references to “remunerate” and “remunerated” shall be construed accordingly.