

DISTANCE MARKETING DIRECTIVE INSTRUMENT 2004**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000("the Act"):
- (1)
 - (a) section 118(8) (Market abuse);
 - (b) section 138 (General rule-making power);
 - (c) section 139(1) and (4) (Miscellaneous ancillary matters);
 - (d) section 145 (Financial promotion rules);
 - (e) section 147 (Control of information rules);
 - (f) section 149 (Evidential provisions);
 - (g) section 156 (General supplementary powers);
 - (h) section 157(1) (Guidance);
 - (i) section 247 (Trust scheme rules); and
 - (2)
 - (a) regulation 6(1) of The Open-Ended Investment Companies Regulations 2001 (SI 2001/1228);
 - (b) regulation 3 of the Electronic Commerce Directive (Financial Services and Markets Act 2000) Regulations 2002 (SI 2002/1775); and
 - (c) regulation 2 of the Financial Services and Markets Act 2000 (Fourth 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 as follows:
- (1) Annex B (Amendments to the Insurance: Conduct of Business sourcebook) comes into force on 14 January 2005;
 - (2) Annex C (Amendments to the Mortgages: Conduct of Business sourcebook) comes into force on 31 October 2004; and
 - (3) the remainder of this instrument comes into force on 9 October 2004.

Amendments to the Handbook

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

(1)	(2)
Conduct of Business sourcebook (COB)	Annex A
Insurance: Conduct of Business sourcebook (ICOB)	Annex B
Mortgages: Conduct of Business sourcebook (MCOB)	Annex C
Market Conduct of Business sourcebook (MAR)	Annex D
Authorisation manual (AUTH)	Annex E
Credit unions sourcebook (CRED)	Annex F

Electronic Commerce Directive sourcebook (ECO)	Annex G
Professional firms sourcebook (PROF)	Annex H
Electronic Money sourcebook (ELM)	Annex I
Glossary of definitions	Annex J

Citation

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

By order of the Board
15 April 2004

Annex A

Amendment to the Conduct of Business sourcebook

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

Transitional provisions

...

COB TR1

(1)	(2) Material to which the transitional provision applies: The COB provisions in Table COB TR 2 with the labels indicated	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.0	Extra time provisions				
1.1	<i>ETPI</i>	R	Transitional Relief		
			<p>...</p> <p>(2) Paragraph (1) does not apply to the following:</p> <p>...</p> <p>(j) ...</p> <p><u>(k) (from 9 October 2004) any rule in COB inserted or amended by the Distance Marketing Directive Instrument 2004 and, in the case of an amendment, to the extent of such amendment.</u></p>
	...				

...

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

COB 5

Table: 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
1	<i>COB</i>	R	<p>Delayed amendment of COB for non-distance contracts</p> <p>The amendments to <i>COB</i> made by the Distance Marketing Directive Instrument 2004 on 9 October 2004 do not apply in relation to business which does not involve the conclusion of a <i>distance contract</i> with a <i>retail customer</i>, provided that the <i>firm</i> complies with the requirements of <i>COB</i> in force immediately before 9 October 2004, taking account of any amendments which come into force after that date.</p>	From 9 October 2004 for 12 months	Already in force

2	COB 6.2.21R(1)(a) and COB 6.2.24R(1)	R	<p>Exception for provision of key features to EEA customers</p> <p>(1) There is no requirement for <i>key features</i> to be provided for a new <i>life policy</i>, variation to a <i>life policy</i> or in respect of a <i>scheme</i> if, at the time he signs the application, the <i>customer</i>:</p> <p>(a) (in the case of a <i>life policy</i>) is <i>habitually resident</i> in an <i>EEA State</i> other than the <i>United Kingdom</i>; or</p> <p>(b) (in the case of a <i>scheme</i>) is not present in the <i>United Kingdom</i>;</p> <p>provided that the conditions in (2) are satisfied.</p> <p>(2) The conditions referred to in (1) are that:</p> <p>(a) the <i>EEA State</i> in which the <i>private customer</i> is (as applicable) <i>habitually resident</i> or present imposes requirements on the communication of pre-contract information (beyond the minimum required by Community legislation) when doing the <i>designated investment business</i> concerned from an establishment in the <i>United Kingdom</i>; and</p> <p>(b) the <i>firm</i> complies with COB 6.4.25R, in respect of the <i>packaged product</i>, as if references to “<i>accepting deposits</i>” and “<i>deposits</i>” were references to “<i>designated investment business</i>” and “<i>packaged products</i>” respectively.</p>	From 9 October 2004, indefinitely	Already in force
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3		<p>R</p> <p>Non-investment insurance contracts: compliance with DMD Regulations or ICOB</p> <p>When an <i>insurer effects or carries out a non-investment insurance contract which is a distance contract, then either:</i></p> <p>(1) <i>the Distance Marketing Regulations (other than regulation 2(3)) apply as if the insurer was an unauthorised person; or</i></p> <p>(2) <i>(if the insurer has elected) the rules in ICOB which implement the DMD apply.</i></p> <p>An election under (2) is irrevocable and applies in relation to all such contracts. The <i>insurer</i> must make a record of the election and retain it for 6 years from 14 January 2005.</p> <p>In this transitional provision:</p> <p>“<i>ICOB</i>” means the Insurance: Conduct of Business sourcebook; and</p> <p>“<i>non-investment insurance contract</i>” means a <i>contract of insurance</i> which is a <i>general insurance contract</i> or a <i>pure protection contract</i> but which is not a <i>long-term care insurance contract</i>.</p>	<p>From 9 October 2004 until 14 January 2005</p>	
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...

Chapter 1 (title) General aApplication and general provisions

...

1.2.1 R *COB* applies to every *firm*, except that:

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

...

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

...

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

- (1) ~~*PROF* 5.2 (Nature of nNon-mainstream regulated activities);~~

...

...

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

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

1.3.3 G ...

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

...

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

...

- (3) ... ;
- (4) concluding a *distance contract* with a *retail customer*.

...

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

- (1) this sourcebook does not apply in relation to an activity carried on from an office outside the *United Kingdom* which, if that office were a separate person, if the activity would fall within the overseas persons

exclusions in article 72 of the *Regulated Activities Order*; or ~~(2)~~ would not be regarded as carried on in the *United Kingdom*; ~~or~~

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

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

(b) either that EEA State:

(i) has implemented the DMD; or

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

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

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

...

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

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

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

(3) (in relation to the conclusion of a distance contract with a retail customer and if the conditions in *COB 1.4.3R(2)* are satisfied) *COB 6.7* (Cancellation and withdrawal) and any provision of *COB 6* which requires the provision of information prior to the conclusion of the contract.

~~applies in relation to long term insurance business if the habitual residence of the client is in the United Kingdom.~~

General insurance business

1.4.8 R In addition to the situations in *COB 1.4.2R* and *COB 1.4.3R*, *COB 6.8* (Insurance contracts: life and general) applies in relation to general insurance business if the State of the risk is the United Kingdom (except, in relation to

the conclusion of a *distance contract* and if the conditions in *COB 1.4.3R(2)* are satisfied, any provision of *COB 6.8* which requires the provision of information prior to the conclusion of the contract).

...

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

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

...

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

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

...

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

...

The Distance Marketing Directive

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

After *COB 1.9* insert the following new sections:

1.10 Application of the Distance Marketing Directive and the Distance Marketing Regulations

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

Initial service agreement and successive operations

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

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

- (a) the opening of a bank account, which would be an initial service agreement, and the deposit or withdrawal of funds from that account which would be a successive or series of separate operations under that initial agreement; however, adding a debit card to the account would be the addition of a new element involving a separate contract; and
- (b) concluding an *investment management* agreement would be an initial service agreement, and carrying on discretionary or advisory transactions under that agreement would be a successive or a series of separate operations under it.

Other examples are, in the *FSA's* view:

- (c) opening a brokerage account for the purposes of trading securities, and transactions under that account;
- (d) establishing a facility to enable a *customer* to subscribe to an *ISA* for the present and future tax years, and successive subscriptions under that agreement;
- (e) subscribing to an *investment trust savings scheme*, and successive purchases or sales of *shares* under that scheme; and
- (f) concluding a *life policy*, *pension contract* or *stakeholder pension scheme* that includes a pre-selected option providing for future increases or decreases in regular *premiums* or payments, and subsequent *index-linked* changes to those

premiums or increases or decreases to pension contributions following fluctuations in salary.

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

Retail customer

- 1.10.3 G (1) The *Distance Marketing Directive* provides protections for ‘any natural person who, in distance contracts ... is acting for purposes which are outside his trade, business or profession’, for which the *FSA* uses the term ‘*retail customer*’. In practice, private individuals may act in a number of capacities. In the *FSA*’s view *retail customer* does not include an individual acting, for example:
- (a) as trustee of a trust such as a housing or NHS trust; or
 - (b) as member of the governing body of a club or other unincorporated association such as a trade body or a student union; or
 - (c) as a pension trustee (but see *COB* 6.4.19R and *COB* 6.7.8R regarding the information and cancellation rights of such trustees).
- (2) Examples of *retail customers* are:
- (a) personal representatives, including executors, unless they are acting in a professional capacity, for example, a solicitor acting as executor; or
 - (b) private individuals acting in personal or other family circumstances for example, as trustee of a family trust.

1.10.4 not used

Use of intermediaries

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

course of the offer, negotiation and conclusion of a contract, the contract will not be a *distance contract*.

Distance contracts for intermediation services

- 1.10.6 G Some of the services which some intermediaries provide will themselves fall within the scope of the *DMD*. The *FSA* expects this to apply in only a small minority of cases, for example where the intermediary agrees to provide continuing advisory, broking or portfolio management services for a *retail customer*. The *DMD* is only relevant if:
- (1) there is a contract between the intermediary and the *retail customer* in respect of the intermediary's mediation services; an intermediary may in its *terms of business* make clear that it does not, in providing its mediation services, act contractually on behalf of, or for, its *retail customer* and then proceed on the basis that no contract for its mediation services will arise;
 - (2) the contract is a *distance contract*; and
 - (3) the contract is concluded other than merely as a stage in the provision of another service by the intermediary or another *person* (see *COB 4 Ann 1R(13)* and *COB 6.7.17*, Row 1, case D(a)).

Application of parts of the Distance Marketing Regulations

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

- (1) regulation 11 (Automatic cancellation of an attached distance contract) on which there is guidance in *COB 6.7.51A*; and
- (2) regulation 13 (Payment cards).

1.11 Application of COB in relation to deposits

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

COB	Subject matter	Application for cash deposit ISAs	Application for other deposits
2.5.3R	Exclusion of liability	√ *	√*
2.6	General provisions related to distance contracts	√ *	√ *
3.5.5R to 3.5.7R 3.8.4R to 3.8.5E	Financial promotions	√	√
3.9.6R(1) 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	Key features	√ *	X
6.4.27R	Provision of key features or other information in relation to a telephone call	√ *	√ *
6.4.25R	Pre-contract information when entering into a <i>distance contract</i> for <i>accepting deposits</i>	X	√ *
6.7.7R(1) 6.7.7R(3)	Cancellable contracts	X √ *	√ * X
6.7.10R(2), 6.7.10AR, 6.7.11R, 6.7.28R	Cancellation period	√ *	√ *
6.7.51R	Effects of cancellation	√ *	√ *
6.7.42R, 6.7.44R	Exercising the right to cancel	√ *	√ *
6.7.52R	Obligations on cancellation	√ *	√ *
<p>Note:</p> <p>(1) Those <i>rules</i> marked with "X" do not apply; those marked with √ do apply. Those marked * will not apply to a <i>firm</i> which subscribes to the edition of the Guidance for subscribers to the Banking Code [in force on 9 October 2004]. Instead, the <i>firm</i> must comply with certain provisions of the Banking Code Guidance (<i>COB</i> 1.11.2R).</p> <p>(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>.</p>			

Exemption for firms which follow the Banking Code Guidance

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

1.11.3 R Table: This table belongs to *COB* 1.11.2R(2)

(1) COB rules which do not apply	(2) Equivalent provisions of the Banking Code Guidance
<i>COB 2.5</i> (Exclusion of liability)	[references in the Code which correspond to relevant COB rules to be added when settled]
<i>COB 2.6</i> (General provisions related to distance contracts)	
<i>COB 3.9.6R(2)</i> and <i>3.9.8R</i> (Direct offer financial promotions: cash deposit ISAs)	
<i>COB 6.1 to 6.5</i> (Key features)	
<i>COB 6.7</i> (Cancellation and withdrawal)	

...

Chapter 2 ~~General r~~ Rules which apply to all firms conducting designated investment business
(title)

...

- 2.5.1 R (1) This section (other than *COB 2.5.5R*) applies to a firm that ~~makes any written or oral communication to a *customer* in the course of, or in connection with,~~ its conducts *designated investment business*.
- (2) This section (other than *COB 2.5.3R* and *COB 2.5.4R*) applies to a *firm* which enters into a *distance contract* to *accept deposits* with a *retail customer*.

Purpose

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

Limits on the exclusion of liability: designated investment business

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

...

Limits on the exclusion of liability: distance contracts to accept deposits

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

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

2.6 General provisions related to distance contracts

Application

- 2.6.1 R This section applies to a *firm* which:

- (1) conducts *designated investment business* with or for a *retail customer* in relation to a *distance contract*; or
- (2) enters into a *distance contract to accept deposits* with a *retail customer* (but see COB 1.11.2R (Exemption for firms which follow the Banking Code Guidance)).

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

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

Unsolicited services

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

- (1) *advise on, arrange, enter into* or conduct any *designated investment business* in relation to a *distance contract* with a *retail customer* without a prior request on his part, when the supply of such service includes a request for immediate or deferred payment; or
- (2) enforce any obligations against a *retail customer* in the event of unsolicited supplies of such services, the absence of reply not constituting consent.

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

Paper copy of contractual terms and conditions

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

Change in means of distance communication

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

...

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

...

(3) ...

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

...

Exceptions to territorial scope: rules without territorial limitation

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

...

...

Exceptions to territorial scope: distance contracts

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

(2) The conditions are that:

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

(b) either that *EEA State*:

(i) has implemented the *DMD*; or

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

(c) the *financial promotion* relates, exclusively, to a *distance contract*, for the conclusion of which the obligations provided for by the *DMD* (or corresponding obligations) are applied by that State; and

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

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

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

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

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

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

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

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

...

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

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

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

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

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

(d) details of the basis or amount of any *commission* or *remuneration* which might be payable by the *person* who is offering the *investment* or service to another *person*.

- 3.9.7 R ~~[deleted] Direct offer financial promotions: particular information required~~
~~This table belongs to COB 3.9.6R(2)~~

Delete the table "Direct offer financial promotions: particular information required".

Contractual terms and conditions for distance contracts

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

- (2) Exemption: means of distance communication

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

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

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

- (4) Exemption: other successive or separate operations

This exemption applies if:

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

Cash deposit ISAs

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

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

...

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

...

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

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

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

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

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

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

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

...

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

column A of COB 4.2.9R and is limited to the type of business specified in the same row in column B. _

Meaning of 'private customer'

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

Authorised professional firms

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

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

Purpose

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

Requirement to provide terms of business to a customer

- 4.2.5 R (4) Unless any of the exemptions in COB 4 Ann 1R applies, a customer A firm must, in good time before designated investment business is conducted, provide a customer be provided with its a firm's terms of business, setting out the basis on which the designated investment business is to be conducted with or for the customer within the period specified in (2) or

(3).

- (2) ~~A firm must, before conducting any designated investment business with or for a specific private customer, provide him with its terms of business, unless the customer has made an oral offer to enter into an investment agreement relating to an ISA, or a stakeholder pension scheme, that relates to a designated investment, in which case the terms of business must be provided to him within five business days of the offer.~~
- (3) ~~If the customer is an intermediate customer, the firm must provide its terms of business within a reasonable period of the firm beginning to conduct designated investment business with or for the customer.~~

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

- 4.2.6 G (1) Terms of business will be provided in 'good time' for the purposes of COB 4.2.5R if provided in sufficient time to enable the customer to consider properly the service or investment on offer before he is bound.
- (2) COB 4.2.5R does not require the same information to be provided again if the customer already has it (for example through a direct offer financial promotion).

...

4.2.9 R ~~[deleted]-Designated investment business to which the terms of business and client agreement requirements in this section do not apply.
This table belongs to COB 4.2.1R~~

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

Contents of terms of business Adequate detail

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

- (1) set out in adequate detail the basis on which it will conduct

designated investment business with the customer; and

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

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

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

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

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

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

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

Information not available at time of issue of terms of business

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

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

Terms of business provided in more than one document

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

Contents of terms of business: non-mainstream regulated activities of an authorised professional firm

- 4.2.12A E (1) An authorised professional firm should include, in its terms of business, the information in COB 4 Ann 2E (25).
- (2) For an authorised professional firm, with respect to its non-mainstream regulated activities and as to the content only of its terms of business:
- (a) compliance with (1) may be relied on as tending to establish compliance with COB 4.2.5R; and
- (b) contravention of (1) may be relied on as tending to establish contravention with COB 4.2.5R.

...

Records

4.2.14 R ...

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

At the end of *COB 4*, insert the following new Annexes:

1 Table: Circumstances in which the terms of business requirement in COB 4.2.5R does not apply and conditions for using the exemption (R)

This table belongs to COB 4.2.5R

	Exempted type of firm or transaction or event:	Conditions for using the exemption:
(1)	Voice telephony communications	(a) At the beginning of the telephone conversation, the <i>firm</i> must provide the <i>customer</i> with the name of the <i>firm</i> and (if the call is initiated by or on behalf of the <i>firm</i>) the commercial purpose of the call; (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 the following information:
		(i) the name of the person in contact with the <i>customer</i> and his link with the <i>firm</i> ;
		(ii) a description of the main characteristics of the service;
		(iii) the total price to be paid by the <i>customer</i> to the <i>firm</i> for the services, including all related fees, charges and expenses, and all taxes paid through the <i>firm</i> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>customer</i> to verify it; and notice of the possibility that other taxes or costs may exist that are not paid through the <i>firm</i> or imposed by it;

		(iv) the existence or absence of a right to cancel under <i>COB 6.7</i> and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>customer</i> may be required to pay in accordance with <i>COB 6.7.52R(1)(b)</i> , as well as the consequences of not exercising it; and
		(v) that other information is available on request and the nature of that information;
		<p>(c) if the <i>customer</i> does not give his explicit consent to receiving only the limited information in (b), and the parties wish to proceed by telephone, 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 all of the information required by <i>COB App 1</i> orally to the <i>customer</i>; and</p> <p>(d) in the case of either (b) or (c), the <i>firm</i> must immediately after conclusion of the contract, send the <i>customer</i> a full <i>terms of business</i>.</p> <p>(See also <i>COB 3.8.21G</i> (Real time financial promotions) and <i>COB 3.10</i> (Unsolicited real time financial promotions)).</p>
(2)	The service is being provided exclusively by <i>means of distance communication</i> (other than telephone) which does not enable a <i>terms of business</i> to be provided before a contract is concluded	<p>(a) The service is provided in this way at the <i>customer's</i> request; and</p> <p>(b) the <i>firm</i> must send the <i>terms of business</i> to the <i>customer</i> immediately after conclusion of the contract.</p>

(3)	The <i>firm</i> has an initial service agreement with the <i>customer</i>	The <i>designated investment business</i> to be conducted is a successive operation or separate operation of the same nature to be performed for the <i>customer</i> under that initial agreement (see <i>COB</i> 1.10.2G(1)).
(4)	The <i>firm</i> has no initial service agreement with the <i>customer</i> but the <i>designated investment business</i> to be conducted is a successive operation or separate operation of the same nature for the <i>customer</i> (see <i>COB</i> 1.10.2G(2))	The <i>firm</i> has performed an operation of the same nature for the <i>customer</i> within the last year.
(5)	<i>Life insurer</i>	The <i>firm</i> is <i>effecting</i> a <i>life policy</i> issued or to be issued by it as <i>principal</i> .
(6)	<i>Operator of a collective investment scheme</i>	The <i>firm</i> is: (a) conducting any <i>designated business</i> as part of <i>scheme management activity</i> ; or (b) providing any service to the <i>trustee</i> or <i>depository</i> of the <i>scheme</i> which is not part of the <i>operator's scheme management activity</i> ; or (c) selling or purchasing as <i>principal units</i> in a <i>scheme</i> except a sale or purchase of <i>units</i> in an <i>unregulated collective investment scheme</i> under a <i>distance contract</i> with a <i>retail customer</i> .
(7)	<i>Trustee or depository</i>	The <i>firm</i> is acting as a <i>trustee</i> of a <i>unit trust</i> or <i>depository</i> of an <i>ICVC</i> .

(8)	<i>Operator of investment trust savings scheme</i>	The <i>firm</i> is: (a) bringing about a transaction in the <i>shares</i> of any <i>investment trust</i> that is the subject of the <i>scheme</i> ; or (b) conducting any <i>designated investment business</i> as part of its activities as such (except a <i>distance contract</i> not within (a) with a <i>retail customer</i>).
(9)	<i>Supplier of a published recommendation</i>	The <i>firm</i> is supplying a <i>published recommendation</i> .
(10)	<i>OPS firms</i> who are <i>trustees</i> of an <i>OPS</i>	The <i>firm</i> is carrying on any <i>designated investment business</i> as part of its <i>OPS activity</i> in relation to an <i>occupational pension scheme</i> of which it is <i>trustee</i> .
(11)	Advising during preparation of <i>terms of business</i>	The <i>advice</i> on <i>investments</i> or information is provided solely for the purpose of preparing <i>terms of business</i> or entering into a <i>client agreement</i> .
(12)	<i>Designated investment business</i> performed after termination of <i>terms of business</i>	The <i>firm</i> is acting for the purposes only of fulfilling any obligations still outstanding under the <i>terms of business</i> .

(13)	<i>Execution-only transactions</i>	<p>The <i>firm</i> is entering into or bringing about any <i>execution-only transaction</i> except:</p> <p>(a) a transaction in a <i>contingent liability investment</i> with or for a <i>private customer</i>; or</p> <p>(b) where the <i>firm</i> is entering into a <i>distance contract</i> with a <i>retail customer</i>, unless the contract:</p> <p>(i) relates solely to <i>dealing as agent, advising</i> or <i>arranging</i> by the <i>firm</i>; and</p> <p>(ii) is concluded merely as a stage in the provision of another service by the <i>firm</i> or another <i>person</i> (see <i>COB 1.10.6G</i>).</p>
(14)	<i>Direct offer financial promotion</i>	<p>The <i>firm</i> is concluding a contract with a <i>customer</i> as a result of a <i>direct offer financial promotion</i> to which <i>COB 3.9</i> (Direct offer financial promotions) applies. (<i>COB 4.2.5R</i> (Requirement to provide terms of business to a customer) may therefore apply for a contract concluded as a result of a <i>direct offer financial promotion</i> communicated to a <i>person</i> outside the <i>United Kingdom</i>.)</p>
(15)	The <i>customer</i> is an <i>intermediate customer</i> and not a <i>retail customer</i>	<p>The <i>firm</i> must provide <i>terms of business</i> within a reasonable period of the <i>firm</i> beginning to conduct business with or for the <i>customer</i>.</p>

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:	
(1)	Commencement of the terms of business When and how the <i>terms of business</i> are to come into force.
(2)	Regulator The <i>firm's</i> statutory status (in accordance with GEN 4 Ann 1R (Statutory Status Disclosure)).
(3)	Investment objectives The <i>customer's</i> investment objectives.
(4)	Restrictions (a) Any restrictions on: (i) the types of <i>designated investment</i> in which the <i>customer</i> wishes to invest; and (ii) the markets on which the <i>customer</i> wishes transactions to be <i>executed</i> ; or (b) that there are no such restrictions.
(5)	Services The services the <i>firm</i> will provide.
(6)	Payments for services Details of any payment for services payable by the <i>customer</i> to the <i>firm</i> , including where appropriate: (a) the basis of calculation; (b) how it is to be paid and collected; and (c) how frequently it is to be paid; whether or not any other payment is receivable by the <i>firm</i> (or to its knowledge by any of its <i>associates</i>) in connection with any transaction <i>executed</i> by the firm, with or for the customer, in addition to or in lieu of any <i>fees</i> .
(7)	Investment manager If the <i>firm</i> is to act as an <i>investment manager</i> :
	(a) the arrangements for giving instructions to the firm and acknowledging those instructions;
	(b) the initial value of the managed portfolio;
	(c) the initial composition of the managed portfolio; and

	(d)	the period of account for which statements of the portfolio are to be provided in accordance with <i>COB 8.2.4R</i> (Requirement for a periodic statement) (where <i>periodic statements</i> are required).
(8)	Accounting	The arrangements for accounting to the <i>customer</i> for any transaction <i>executed</i> on his behalf.
(9)	Cancellation and withdrawal	<p>(a) In the case of a <i>non-packaged product ISA</i> or <i>PEP</i>, an explanation of any right to withdraw (see <i>COB 6.7</i> (Cancellation and withdrawal)) or, if it is the case, a statement that such rights will not apply.</p> <p>(b) (In the case of <i>ISAs</i>), information about:</p> <p>(i) the options available on cancellation;</p> <p>(ii) how cancellation will operate in circumstances where the account forms part of, for example, a <i>maxi-ISA</i> which contains other components; and</p> <p>(iii) a statement that the effect of cancelling the last component has the effect of cancelling the entire <i>ISA</i> agreement and may also (where it is the case) delay the <i>customer</i> from entering into another <i>ISA</i> agreement until the next tax year.</p>
(10)	Unsolicited real time financial promotion	In the case of a <i>private customer</i> , the circumstances, if any, in which the <i>firm</i> or its <i>representative</i> or <i>employees</i> may <i>communicate</i> an <i>unsolicited real time financial promotion</i> to the <i>private customer</i> .
(11)	Acting as principal	That the <i>firm</i> may act as <i>principal</i> in a transaction with the <i>customer</i> , if this is the case.
(12)	Conflict of interest and material interest	When a <i>material interest</i> or conflict of interest may or does arise, the manner in which the <i>firm</i> will ensure fair treatment of the <i>customer</i> as required by <i>COB 7.1.3R</i> (Fair treatment).
(13)	Broker fund adviser	If the <i>firm</i> acts as a <i>broker fund adviser</i> for a <i>private customer</i> , a statement explaining the nature of the <i>firm's</i> dual role as adviser to the <i>customer</i> and adviser to the <i>life office</i> or <i>operator</i> in question.

(14)	<p>Use of soft commission agreements</p> <p>If the <i>firm</i> is to be authorised under the <i>terms of business</i> to undertake transactions with or through the agency of another <i>person</i> with whom the <i>firm</i> has a <i>soft commission agreement</i>, the prior disclosure required by COB 2.2.16R (Prior disclosure).</p>
(15)	<p><i>Customer's</i> understanding of risk</p> <p>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:</p>
	(a) <i>warrants</i> or <i>derivatives</i> ;
	(b) <i>non-readily realisable investments</i> ;
	(c) <i>penny shares</i> ;
	(d) <i>securities</i> which may be subject to stabilisation;
	(e) <i>stock lending activity</i> ;
	the relevant risk warning.
(16)	<p>Unregulated collective investment scheme</p> <p>That the services to be provided by the <i>firm</i> will or may include <i>advice on investments</i> relating to, or <i>executing</i> transactions in <i>units</i> in <i>unregulated collective investment schemes</i>, if this is the case.</p>
(17)	<p>Underwriting</p> <p>That the <i>firm</i> may enter into transactions for the <i>customer</i>, either generally or subject to specified limitations, when the <i>customer</i> will incur obligations as an underwriter or sub-underwriter, if this is the case.</p>
(18)	<p>Stock lending</p> <p>In the case of a <i>private customer</i>, that the <i>firm</i> may undertake <i>stock lending activity</i> with or for the <i>private customer</i> (if this is the case), specifying the assets to be lent, the type and value of <i>relevant collateral</i> from the borrower and the method and amount of payment due to the <i>private customer</i> in respect of the lending.</p>
(19)	<p>Right to realise a private customer's assets</p> <p>The information required by COB 7.8.3R (Contractual rights to realise a private customer's assets), if applicable.</p>
(20)	<p>Complaints procedure</p> <p>How to complain to the <i>firm</i>, and a statement, if relevant, that the <i>customer</i> may subsequently complain directly to the <i>Financial Ombudsman Service</i>.</p>

(21)	<p>Compensation</p> <p>Whether or not compensation may be available from the <i>compensation scheme</i>, should the <i>firm</i> be unable to meet its liabilities, and information about any other applicable named compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained. (See the example in COB 5.5.11G (Investment firms: compensation information)).</p>	
(22)	<p>Termination method</p> <p>How the <i>terms of business</i> may be terminated, including a statement:</p>	
	(a)	<p>That termination will be without prejudice to the completion of transactions already initiated, if this is the case;</p>
	(b)	<p>That the <i>customer</i> may terminate the <i>terms of business</i> by written notice to the <i>firm</i> and when this may take effect;</p>
	(c)	<p>That if the <i>firm</i> has the right to terminate the <i>terms of business</i>, it may do so by notice given to the <i>customer</i>, and specifying the minimum notice period, if any; and</p>
	(d)	<p>of any agreed time after which, or any agreed event on which, the <i>terms of business</i> will terminate.</p>
(23)	<p>Termination consequences</p> <p>The way in which transactions in progress are to be dealt with upon termination.</p>	
(24)	<p>Contracting out of best execution</p> <p>When the obligation to provide best execution can be and is to be waived, a statement:</p>	
	(a)	<p>that the firm does not owe a duty of best execution; or</p>
	(b)	<p>the circumstances in which it does not owe such a duty.</p>
(25)	<p>Authorised professional firms</p> <p>If the <i>firm</i> is an <i>authorised professional firm</i> and may conduct a <i>non-mainstream regulated activity</i> with or for the <i>customer</i> (whether with or without any other <i>regulated activity</i> for the same <i>customer</i>), an explanation, with respect to that activity, of:</p>	
	(a)	<p>how to complain to the <i>firm</i>, where the <i>customer</i> may subsequently complain and the mechanisms that operate in respect of such a subsequent complaint; and</p>
	(b)	<p>what, if any, compensation arrangements are available to the <i>customer</i> if the <i>firm</i> is unable to meet any of its liabilities, or the availability of an explanation describing those arrangements.</p>

- 1 Table Content of terms of business provided to a customer: managing investments on a discretionary basis

This table belongs to COB 4.2.11E.

Managing investments on a discretionary basis			
Additional contents in respect of discretionary management			
In respect of discretionary management, <i>terms of business</i> (including a <i>client agreement</i>) provided to a <i>customer</i> should, in addition, include some provision about each of:			
(1)	Extent of discretion		
	(a)	The extent of the discretion to be exercised by the <i>firm</i> , including any restrictions on:	
		(i)	the value of any one <i>investment</i> ; and
		(ii)	the proportion of the portfolio which any one <i>investment</i> or any particular kind of <i>investment</i> may constitute; or
	(b)	That there are no such restrictions.	
(2)	Periodic statements		
	(a)	The frequency of any <i>periodic statements</i> , except when a <i>periodic statement</i> is not required by COB 8.2.7R (Promptness, suitable intervals and adequate information); and	
	(b)	whether those statements will include some measure of performance, and if so, what the basis of that measurement will be.	
(3)	Valuation The basis on which assets comprised in the portfolio are to be valued.		
(4)	Borrowings That the <i>firm</i> may commit the <i>customer</i> to supplement the funds in the portfolio, including borrowing on his behalf, if this is the case, and, if it may:		
	(a)	the circumstances in which the <i>firm</i> may do so;	
	(b)	whether there are any limits on the extent to which the <i>firm</i> may do so and, if so, what those limits are; and	
	(c)	any circumstances in which such limits may be exceeded.	

(5)	Underwriting commitments If it is the case, that the <i>firm</i> may commit the <i>customer</i> to any obligation to underwrite or sub-underwrite any issue or offer for sale of <i>securities</i> , and:
(a)	whether there are any restrictions on the categories of <i>securities</i> which may be underwritten and, if so, what these restrictions are; and
(b)	whether there are any financial limits on the extent of the underwriting and, if so, what these limits are.

...

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

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

...

...

ISD investment firms: compensation information

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

...

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

6.1 ~~Packaged p~~Product and ISA disclosure

Application

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

...

(6) ...

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

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

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

...

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

Requirement to produce key features

6.1.4 R ...

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

...

General Medium for provision of key features

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

...

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

...

6.2.5A G Where this chapter requires *key features* or other information to be given, it does not require the same information to be provided again if the *private customer* already has it.

...

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

...

Exception for life policies: sales through intermediaries

6.2.9 R (4) ~~COB 6.2.7R does not apply to a *product provider* when its *life policy* is sold on the *personal recommendation* of, or arranged to be sold by, an *independent intermediary* or *marketing group associate* another *person*, provided that other *person*:~~

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

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

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

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

6.2.11 G ~~[deleted] An adequate oral explanation of the information required by COB 6.2.9R(2) should include the following:~~

- (1) ~~The *policy type*, brand name and issuing *company*;~~
- (2) ~~the *policy aims*, the *private customer's* commitment and the risk factors;~~
- (3) ~~a summary of the reasons for any recommendation;~~
- (4) ~~where it is the case, the fact that *commission* or *remuneration*~~

- ~~will be paid to the adviser or representative; and~~
 (5) ~~that key features will be sent within five business days.~~

-
 Life policies: pre-completion variations

- 6.2.12 R (1) Where *key features* have already been provided by a *firm* to a *private customer* in accordance with COB 6.2.7R and the terms for the proposed *life policy* are subsequently altered before the *private customer* completes an application form, the *firm* must ensure that the *private customer* is provided with revised *key features*, unless the alteration is one or more of the following:
- (1) (a) the amount of the *premium* is changed;
 - (2) (b) the amount of any *commission* or *remuneration* payable is reduced;
 - (3) (c) a rider benefit is added, removed or amended.
- (2) If (1)(a) to (c) apply, then, subject to COB 6.4.27R (telephone sales), if the contract is to be a *distance contract* with a *retail customer*, the *retail customer* must be provided with details of such changes in a *durable medium* in good time before the contract is concluded.

...

- 6.2.14 R Where *key features* have already been provided to a *private customer* by a *firm*, and the terms of the proposed *life policy* are materially altered after the *private customer* completes an application form, the ~~*firm* must ensure that the *private customer* must be~~ *is* provided with ~~written~~ details of the change in a *durable medium* as soon as practicable and offered revised *key features*.
- 6.2.15 G What constitutes a ~~'material change'~~ 'materially altered' requires consideration of the facts in the circumstances of each case. Changes which lead to an increase in the proposed *premium* of 25 per cent or less can be regarded as not material and can be ignored, so long as the underlying *policy* terms and conditions are the same. Other changes to the terms of the proposed contract, such as an increase in the rate or basis of *commission*, a different charges structure or an extension of the *policy* term should be regarded as material.

Variations to existing life policies

- 6.2.16 R When a policyholder applies to vary a *life policy* issued on or after 1 January 1995 (or is recommended to do so) and the variation of the *policy* gives rise to a right to cancel under COB 6.7.7R, ~~a document containing at least~~ the policyholder must be provided with:
- (1) the information required by COB 6.5.15R to COB 6.5.19R, COB 6.5.23R to COB 6.5.25R, COB 6.5.27R to COB 6.5.28R

and *COB* 6.5.38R; and

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

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

- 6.2.17 G ~~*Key features* were introduced for new *policies* sold from 1 January 1995. *Firms can meet* One way of meeting the requirements of *COB* 6.2.16R is by providing a complete set of new *key features* to the policyholder. If a full *key features* is not provided, then as a minimum the information to be supplied must include the details required by *COB* 6.5.15R to *COB* 6.5.19R (An Example), *COB* 6.5.23R to *COB* 6.5.25R (Tables), *COB* 6.5.19R to *COB* 6.5.28R (Deductions Summary) and *COB* 6.5.38R (Commission/Remuneration). The illustrative figures in the *key features* could relate to just the increase in *premiums* and benefits, or could illustrate a 'before and after' situation.~~
- 6.2.18 R When a policyholder applies to vary a *policy* issued before 1 January 1995 (or is *personally recommended* to do so) and the variation of the *policy* gives rise to a right to cancel under *COB* 6.7.7R, information must be given to the policyholder by the *firm* that is *personally recommending*, arranging or effecting the variation before it is put into effect, unless *COB* 6.2.19R or *COB* 6.4.27R (telephone sales) applies. The *firm* must:
- (1) believe on reasonable grounds that the information given is sufficient to enable the policyholder to understand the consequences of the variation; and
- (2) in the case of a variation which results in a new *distance contract*, in good time before the variation is put into effect, provide all the contractual terms and conditions and the information in *COB* App 1.
- 6.2.19 R (+) ~~*COB* 6.2.16R and *COB* 6.2.18R do not apply to a *product provider* when the variation to its *life policy* is effected on the *personal recommendation* of or arranged by an *independent intermediary* or *marketing group associate* another person, provided that other person:~~
- (1) is a *firm* (or *appointed* representative) operating from an establishment maintained by the *firm* (or *appointed representative*) in the *United Kingdom*; or
- (2) is operating from an establishment in an *EEA State* whose law imposes an obligation on the *person* to

provide information about the variation to the *life policy* in accordance with articles 3 and 5(1) and (2) of the *Distance Marketing Directive*.

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

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

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

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

~~(except for *distance contracts with retail customers*) in an~~

~~(a) *EEA State* other than the *United Kingdom*; or~~

~~1)~~

~~Outside the *EEA* and he is not present in the *United*~~

~~(b) *Kingdom*.~~

~~2)~~

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

~~Schemes~~

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

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

- 6.2.23 G (1) ~~COB 6.2.22R applies not just to new purchases but also to any recommendation or application to transfer the value of a~~

particular fund holding within a *scheme* to a different fund within the same *scheme*.

- (2) Where a *private customer* has responded to a *direct offer financial promotion*, the mailing package or *direct offer financial promotion* should have included example-based *key features* – there is no requirement to provide a further set of *key features* to such a *private customer* in respect of the same transaction.
- (3) ~~An adequate oral explanation of the information required by COB 6.2.22R should include the following:~~
 - ~~(a) The name of the *scheme*;~~
 - ~~(b) the *scheme's* aims, the amount to be invested and the risk factors;~~
 - ~~(c) the charges that the *customer* will or may bear and their effect on his *investment*;~~
 - ~~(d) a summary of the reasons for any recommendation;~~
 - ~~(e) Where it is the case, that *commission* or *remuneration* will be paid to the *adviser* or *representative*; and~~
 - ~~(f) That *key features* will be sent within five *business days*.~~

Exceptions from the requirement to provide key features for schemes

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

- (1) ~~It is a *UK firm* and the obligation arises from business carried on in another *EEA State* under an *EEA right* the firm is a product provider and the scheme holding is sold on the personal recommendation of, or arranged to be sold by another person, provided that other person:~~
 - ~~(a) is a firm (or appointed representative) operating from an establishment maintained by the firm (or appointed representative) in the United Kingdom; or~~
 - ~~(b) is operating from an establishment in an EEA State whose law imposes obligations on the person to provide information about the scheme holding in accordance with articles 3 and 5(1) and (2) of the Distance Marketing Directive; or~~
- (2) at the time the *private customer* signs the application, the *private customer* is *habitually resident* outside the *EEA* and is not present in the *United Kingdom*; or

- (3) (except for distance contracts with retail customers) the *scheme holding* is purchased by a *private customer* on an execution-only basis; or
- (4) the *scheme holding* is purchased on behalf of a *private customer* by an *investment manager* exercising discretion; or
- (5) the sale of the *scheme holding* is arranged or recommended by an *investment manager* who is not exercising discretion and the *private customer* has agreed, either in relation to that specific holding or generally, that *key features* need not be provided; or
- (6) a *private customer* is making a purchase of a *scheme holding* in a fund in which he already has a *scheme holding* and has already been provided with appropriate key features covering the purchase:
 - (a) ~~where the terms and conditions, including all charges, are the same as applied at the time of the previous purchase of a scheme holding in that fund; and~~
 - (b) ~~key features outlining those terms and conditions were issued to the private customer in respect of that previous purchase; or~~
- (7) a *private customer* is transferring from *accumulation units* to *income units* of the same *scheme* (or vice versa) and has already been supplied with *key features* ~~for that scheme, which cover the transfer; or-~~
- (8) the scheme is a UCITS scheme recognised under section 264 of the Act (Schemes constituted in other EEA States); however, if the sale is by way of a distance contract, the firm must provide all the contractual terms and conditions and the information in COB App 1 instead of key features.

- 6.2.24A R ~~[deleted] When a firm sells, personally recommends or arranges for the sale of a UCITS scheme recognised under section 264 of the Act (Schemes constituted in other EEA States), then COB 6.2.22R does not apply.~~
- 6.2.25 R ~~[deleted] COB 6.2.22R does not apply to a product provider when the scheme holding is sold on the personal recommendation of, or arranged to be sold by, an independent intermediary or marketing group associate.~~
- ...
- 6.3.5 R The post-sale confirmation required by COB 6.3.3R must be sent or given to the *private customer* ~~no later than the issue of any post-sale notice under the cancellation rules or, if no such notice is required, as~~

soon as reasonably practicable after the contract is effected.

...

- 6.4.1 R *COB 6.4 applies to a firm in accordance with COB 6.1.1R, in respect of occupational pension schemes, self invested personal pensions, income withdrawals, cash deposit ISAs, traded life policies, and stakeholder pension schemes, packaged products and other deposits.*
- 6.4.2 G *Firms are reminded that, under COB 6.2.2R, the key features required to be provided to a private customer under COB 6.4 must be provided by the firm in a durable medium writing. See also COB 6.2.3G to COB 6.2.5G.*
- ...
- 6.4.7 G *Investments within a self-invested personal pension scheme (a "SIPP") are effected by the trustees on behalf of scheme members. Key features should be given to the trustees and to members of SIPPs when packaged products (whether life policies or schemes) are recommended by a firm to scheme members or effected by SIPP trustees. Notice of the right to cancel Cancellation notices should also be copied to SIPP members in these circumstances, in accordance with COB 6.7.31R.*

Income withdrawals

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

Cash deposit ISAs

- 6.4.13 R ~~(1) When a firm that manages, personally recommends or sells a cash deposit ISA to a private customer must ensure, in relation to that cash deposit ISA, that the private customer must be provided with the information specified in COB 6.5.42R instead of key features in good time before the customer is bound by the transaction is entered into, unless COB 6.4.27R (telephone sales) applies (but see COB 1.11.2R (Exemption for firms which follow the Banking Code Guidance)).~~
- (2) ~~Paragraph (1) does not apply to a firm if it is a bank or building society which subscribes to the Banking Code issued by the British Bankers' Association, the Building Societies Association and the Association for Payment Clearing Services.~~

Traded life policies

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

...

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

- (1) is a *firm* (or an *appointed representative*) operating from an establishment maintained by the *firm* (or *appointed representative*) in the *United Kingdom*; or
- (2) is operating from an establishment in an *EEA State* whose law imposes an obligation on the *person* to provide information about the *stakeholder pension scheme* in accordance with articles 3 and 5(1) and (2) of the *Distance Marketing Directive*.

6.4.19 R ...

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

...

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

...

Entering into a distance contract for accepting deposits

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*, unless an exemption in (2), (3), (4) or (5) applies.

(2) Exemption: telephone sales

The exemption in COB 6.4.27R applies in the case of *voice telephony communications* (references to a '*customer*' in that rule should be read as references to a '*retail customer*').

(3) Exemption: certain other means of distance communication

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

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

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

(5) Exemption: other successive or separate operations

This exemption applies if:

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

6.4.26 G There is a further exemption for those *firms* which subscribe to the Banking Code Guidance (see *COB 1.11.2R*).

...

Provision of key features or other information in relation to a telephone call

- 6.4.27 R (1) Where this chapter requires *key features* or other information to be provided, in the case of voice telephony communications, a *firm*:
- (a) must provide the *customer* at the beginning of the telephone conversation with the name of the *firm* and (if the call is initiated by the *firm*) the commercial purpose of the call; and
 - (b) provided the *customer* gives his explicit consent to receiving only limited information, may proceed on the basis of the following oral information only:
 - (i) the name of the person in contact with the *customer* and his link with the *firm*;
 - (ii) a description of the main characteristics of the service;
 - (iii) the total price to be paid by the *customer* to the *firm* for the service, including all related fees, charges and expenses, and all taxes paid through the *firm* together with a statement, where relevant, that commission or remuneration will be paid to the *adviser* or *representative*, or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *customer* to verify it;
 - (iv) where relevant, notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it;
 - (v) the existence or absence of a right to cancel the service under COB 6.7 and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *customer* may be required to pay if the contract is terminated early or unilaterally under its terms, as well as the consequences of not exercising it; and
 - (vi) that other information is available on request, and the nature of that information.
- (2) If the *customer* does not give his explicit consent to receiving only the limited information in (1)(b), and the parties wish to proceed by telephone, the *firm* must prior to the conclusion of the contract provide all of the information required by COB App 1 orally to the *customer*.

- (3) In the case of either (1) or (2), the *firm* must send the *private customer* immediately after the contract is concluded, the required *key features* or other information (as applicable) in a *durable medium*.
- (4) If the service relates to a *tax-exempt policy* issued by a *friendly society*, the *firm* may send an abbreviated *key features* in accordance with COB 6.5.43R (Friendly Society tax-exempt policies).

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

General

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

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

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

...

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

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

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

...

- (8) the arrangements for the application of the right to cancel, including the following:
- (a) the options available on cancellation (a firm must either assist the private customer in switching accounts or refund all monies deposited together with interest);
 - (b) information about how cancellation will operate in circumstances where the account forms part of a maxi-ISA which contains other components;
 - (c) a statement that the effect of cancelling the last component has the effect of cancelling the entire ISA agreement and may also (where it is the case) delay the customer from entering into another ISA agreement until the next tax year; and
 - (d) a statement that a private customer who exercises a right to cancel will not incur any additional charges or be affected by any notice period;

...

Friendly Society tax exempt policies

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

...

Traded life policies

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

...

- 6.7.1 R COB 6.7 applies to:

...

- (5) the operator of a *stakeholder pension scheme*;

(6) a firm which enters into distance contracts with retail customers, the making or performance of which constitutes, or is part of:

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

(b) any other designated investment business; or

(c) accepting deposits;

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

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

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

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

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

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

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

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

~~transfers, because of the difficulty of putting the customer back in his original position.~~

- (6) ~~COB 6.7.17R specifies those non-life agreements for a pension contract, appropriate personal pension or units in an AUT or ICVC which customers have a right to cancel and those which they do not. It also allows firms, for units within an ISA or PEP, to replace cancellation with a pre-sale right to withdraw.~~
- (7) ~~COB 6.7.20R specifies the cancellation procedure which applies to cash deposit ISAs.~~
- (8) ~~COB 6.7.23R specifies certain variations to existing agreements which customers have a right to cancel or right to withdraw.~~
- (9) ~~COB 6.7.54R to COB 6.7.58R contain rules and guidance on investment agreements subject to shortfall and describe how to calculate shortfall.~~

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

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

Delete the existing table and replace with the following:

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

Cancellable investment agreements			
<i>Personal pension contract</i>	Yes ¹	No ¹	30 days ²
<i>Stakeholder pension scheme (SHP)</i>	Yes ¹	No ¹	30 days ²
Certain variations of existing <i>life policies, pension contracts</i> and <i>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
<i>Units in an AUT, recognised scheme or ICVC (outside an ISA or PEP)</i> (1) if sold by <i>distance contract</i> (2) if sold otherwise with advice	No Yes	No No	14 days
<i>EIS</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
C. Contracts where the right arises for distance contracts only			
<i>Distance contract to accept deposits</i>	Yes ^{5,6}	No	14 days

Cancellable investment agreements

<i>Distance contract</i> not mentioned in another row the making or performance of which constitutes, or is part of, <i>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 operate a pre-sale right to withdraw in <i>COB 6.7.19R</i> instead of a post-sale right to cancel (see <i>COB 6.7.14R(2)</i>). A <i>firm</i> may offer a pre-sale right to withdraw, even where there is no right to cancel.			
2. The period is at least 14 days if the option of pre-sale withdrawal is offered.			
3. There is no right to withdraw for a second or subsequent <i>EIS</i> or <i>ISA</i> , or (for an <i>EIS</i> or non-packaged product <i>ISA</i> or <i>PEP</i>) where the <i>firm</i> has previously disclosed to the <i>customer</i> that no such rights will apply.			
4. For <i>units</i> in an <i>AUT</i> , <i>recognised scheme</i> or <i>ICVC</i> (within an <i>ISA</i> or <i>PEP</i>), the <i>firm</i> can choose to offer a seven-day pre-sale right to withdraw rather than a post-sale right to cancel (see <i>COB 6.7.14R(1)</i>). There is no right to cancel or withdraw for a second or subsequent <i>ISA</i> .			
5. There is no post-sale right to cancel for a <i>distance contract</i> where the price depends on fluctuations in the financial market place outside the <i>firm's</i> control which may occur during the cancellation period.			
6. There is no post-sale right to cancel for a <i>distance contract</i> : <div style="margin-left: 20px;"> <p>(a) where the performance of the <i>distance contract</i> has been fully completed by both parties at the <i>customer's</i> express request before the <i>customer</i> exercises his right to cancel; or</p> <p>(b) where the <i>firm</i> has an initial service agreement with the <i>customer</i> and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see <i>COB 1.10.2G</i>).</p> </div>			
7. For a <i>distance contract</i> to give advice, arrange deals, or deal as agent see <i>COB 1.10.6G</i> (Distance contracts for intermediation services).			

...

Post-sale rRight to cancel

- 6.7.7 R A retail customer, ~~who is an individual~~, has a right to cancel:
- (1) a contract ~~an investment agreement~~ specified in column row 1 of *COB 6.7.15R* or *COB 6.7.17R*, unless the right to cancel is disapplied or replaced by anything in column row 2 of *COB 6.7.15R* or *COB 6.7.17R*;
 - (2) a contract ~~n investment agreement~~ for a *stakeholder pension scheme* for which a right to cancel applies under *COB 6.7.12R*;

- (3) ~~a contract~~ an investment agreement for a *cash deposit ISA* ~~in accordance with COB 6.7.20R~~ (but see COB 1.11.2R (Exemption for firms which follow the Banking Code Guidance));
- (4) a variation of a *life policy, pension contract* or *stakeholder pension* scheme for which a right to cancel applies under *COB 6.7.23R*.

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

- 6.7.9 G (1) ...
- (2) A *product provider* or operator of a *stakeholder pension scheme* (see *COB 6.7.2G*) may be unsure whether any of the situations in ~~column~~ row 2 of *COB 6.7.17R* applies to the ~~agreement~~ contract in question. In such circumstances the *product provider* or operator of a *stakeholder pension scheme* may find it convenient to contract with an intermediary for the provision of documentary evidence needed to confirm the status of *customers*. However, the responsibility for ensuring compliance with the *cancellation rules* remains with the *product provider* or operator of a *stakeholder pension scheme*.

Cancellation period

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

- (1) (in the case of a *life policy, personal pension policy, personal pension contract* or *stakeholder pension scheme*) within ~~the shorter of:~~
 - (a) ~~30 days~~ days; or
 - (b) ~~the period (of 14 days or more) specified by the firm;~~
 from the date when the *customer* received a *post sale notice* from the *firm*.
- (2) (in any other case) within ~~14 days~~ days ~~from the date when the customer received a post sale notice from the firm.~~

6.7.10A R The cancellation period begins on:

- (1) (other than for distance contracts and cash deposit ISAs) the date the customer receives the reminder notice of his right to

cancel in accordance with COB 6.7.30R;

- (2) (for distance contracts and cash deposit ISAs the later of:
- (a) (for a life policy) the day the retail customer is informed that the contract has been concluded; or
 - (b) (for any other contract) the day of the conclusion of the contract; or
 - (c) the day on which the retail customer receives the contractual terms and conditions and other information required by COB 3.9, 4.2 or 6, as applicable.

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

Right to cancel a stakeholder pension scheme

- 6.7.12 R (1) A *retail customer*, ~~who is an individual, and~~ who has entered into an ~~investment agreement~~ contract for a *stakeholder pension scheme* has a right to cancel.
- (2) When the *retail customer* has entered into an ~~investment agreement~~ contract for a *stakeholder pension scheme* involving recurring contributions to that *stakeholder pension scheme*, only the first contribution will attract a right to cancel provided that:
- (a) the intention or option to make regular contributions has been disclosed in advance of the *retail customer* entering into the *investment agreement*; and
 - (b) the *retail customer's* intention to make regular contributions is evidenced.

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

Pre-sale rRight to withdraw

- 6.7.14 R A retail customer, ~~who is an individual~~, has a right to withdraw an offer to enter into:
- (1) (unless a right to cancel is offered for an *ISA* or *PEP* under COB 6.7.7R(3), COB 6.7.15R or COB 6.7.17R ~~or COB 6.7.20R~~ and subject to cases 8 and 9 of ~~column~~ row 2 COB 6.7.17R) an *EIS*, *ISA* or *PEP*, following *advice on investments*; the right to withdraw procedures are that the offer made by the *customer* to enter into the agreement contract cannot be accepted by the *firm* until at least seven days after the offer is made; or
 - (2) a *pension annuity* or a *pension transfer* (or a relevant variation), if a right to cancel has been replaced by a right to withdraw under case 4(a) or 7(a) of ~~column~~ row 2, COB 6.7.15R, case 12 of ~~column~~ row 2, COB 6.7.17R, COB 6.7.23R (3), or COB 6.7.26AR (2); the right to withdraw procedures are set out in COB 6.7.19R.

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

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

<u>Cancellable investment agreements contracts and exceptions – life</u>	
Investment agreements for a <u>Long-term insurance contracts</u> for which an individual a <u>retail customer</u> has a right to cancel under <u>COB 6.7.7R(1)</u> (subject to row 2):	
Row 1	<p>A. <u>Life policy</u> (whether or not held within an <i>ISA</i> – see notes 1, 2 and 3 in <u>COB 6.7.16R</u>) (see <u>COB 6.7.23R</u> regarding variation of an existing <i>life policy</i>);</p> <p>B. <u>Appropriate personal pension</u> which is a <i>pension policy</i>;</p> <p>C. <u>Pure protection contract</u>.</p>

Cancellable ~~investment agreements~~ contracts and exceptions – life

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

Row 2	<p><u>There is</u> no right to cancel where any one or more of the following cases applies:</p> <ol style="list-style-type: none"> 1. P<u>pension fund management</u> policy (<u>but see note 5 in COB 6.7.16R</u>); 2. L<u>ife</u> policy that relates to or is associated with securing benefits under a <i>defined benefits pension scheme</i> (<u>but see note 5 in COB 6.7.16R</u>); 3. A<u>ny life</u> policy for a term of six months or less (unless note 3 in <i>COB</i> 6.7.16R applies) (<u>see also note 5 in COB 6.7.16R</u>); 4. P<u>pension</u> policy or <i>stakeholder pension scheme</i> funded (wholly or in part) from payments derived from: <ol style="list-style-type: none"> (a) a <i>pension transfer</i>, for which the right to cancel is replaced by the right to withdraw (see <i>COB</i> 6.7.14R(2)), using the cancellation substitute in <i>COB</i> 6.7.19R; or (b) compensation or redress paid by a <i>firm</i> following a review undertaken in relation to a complaint;
	5. T <u>raded</u> life policy;
	6. L <u>ife</u> policy effected by the trustees of an <i>occupational pension scheme</i> or the employer, or the manager or trustees of a <i>stakeholder pension scheme</i> that represents a: <ol style="list-style-type: none"> (a) <i>pension buy-out contract</i>; or (b) purchase of a without-profits deferred <i>pension annuity</i>; or (c) <i>defined benefits pension scheme</i> or a single <i>premium</i> payment to any <i>occupational pension scheme</i> with a pooled fund (that is, underlying <i>investments</i> are not earmarked for individual scheme members); or (d) purchase made to insure and secure members' pension benefits under a <i>money-purchase occupational scheme</i> or <i>stakeholder pension scheme</i> (unless it is the master, first or only <i>policy</i>);
	7. P <u>pension annuity</u> that is: <ol style="list-style-type: none"> (a) due to commence within a year and a day of the contract, for which the right to cancel is replaced by the right to withdraw (see <i>COB</i> 6.7.14R(2)), using the cancellation substitute in <i>COB</i> 6.7.19R; or

Cancellable investment agreements contracts and exceptions – life

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

	(b) funded (wholly or in part) from compensation or redress paid by a <i>firm</i> following a review undertaken in relation to a complaint;
	8. The <u>retail customer</u> , other than an <i>EEA ECA recipient</i> , at the time he signs the application, is <i>habitually resident</i> :
	(a) in an <i>EEA State</i> other than the <i>United Kingdom</i> (<u>but see note 4 and note 5 in COB 6.7.16R</u>); or
	(b) outside the <i>EEA</i> and is not present in the <i>United Kingdom</i> ;
	9. P <u>pure protection contract</u> effected by the trustees of an <i>occupational pension scheme</i> , an employer or a <i>partnership</i> to secure benefits for employees or the <i>partners</i> in the <i>partnership</i> ;
	<u>10. life policy which is a distance contract where the price depends on fluctuations in the financial market place outside the firm's control which may occur during the cancellation period;</u>
	11. the contract is a <u>distance contract</u> where: (a) the performance of the <i>distance contract</i> has been <u>fully completed by both parties at the retail customer's express request before the retail customer exercises his right to cancel</u> ; or (b) the <i>firm</i> has an initial service agreement with the <u>retail customer</u> and the contract is in relation to a <u>successive operation or separate operations of the same nature under that agreement (see COB 1.10.2G)</u> .

6.7.16 R Notes to cancellable ~~investment agreements~~ contracts and exceptions – life

This table belongs to *COB 6.7.15R*

Notes to COB 6.7.15R:

- | |
|---|
| <p>1. Recurring single <i>premium life policy</i>: Under certain conditions, only the first <i>premium</i> in what might be a series of <i>premiums</i> (for example, in the case of a <i>mini-ISA insurance component</i>) attracts cancellation rights under <i>COB 6.7.7R(1)</i>. The conditions are:</p> |
| <p>(a) the option to make a series of single <i>premium</i> payments is disclosed at outset (for example, in the <i>key features</i>); and</p> <p>(b) the intention is evidenced (for example, by the <i>retail customer</i> establishing a direct-debit mandate).</p> |
| <p>2. Multiple contracts: Where a <i>retail customer</i> enters into a set of <u>contracts investment agreements</u> at the same time (for example, the different components held within a <i>maxi-ISA</i>) and with the same <i>firm</i> (or another <i>person</i> in the same <i>marketing group</i> as that <i>firm</i>), and that set is being purchased to fulfil one investment objective of the <i>retail customer</i>, the <i>firm</i> may treat the multiple agreements <u>contracts</u> as being one agreement <u>contract</u> for the purposes of <i>COB 6.7</i>. But if it does so, the <i>firm</i> must ensure that the <i>customer</i> retains a right to cancel each <u>contract investment agreement</u> separately. See also COB 6.7.37R in relation to a maxi-ISA. This note applies also to a group of <i>contracts of insurance</i>, for example, <i>term assurance</i> contracts which have been established as part of a specific marketing arrangement. Such an arrangement may not have an investment objective.</p> |
| <p>3. A purchaser of a single <i>premium pension policy</i> has a right to cancel where the designated retirement date is within six months of the date of the <i>policy</i>, unless the <i>policy</i> falls within case 1, 4 or 7(b) of column row 2.</p> |
| <p>4. For a <i>customer</i>, other than an <i>EEA ECA recipient, habitually resident</i> in an <i>EEA State</i> other than the <i>United Kingdom</i>, <i>firms</i> are reminded that they may need to apply cancellation in accordance with the requirements in that <i>EEA State</i>.</p> |
| <p>5. <u>This exemption from giving a right to cancel does not apply for distance contracts.</u></p> |

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

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

Cancellable investment agreements contracts and exceptions – non-life

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

Row 1	<p>A. P<u>p</u>ension contract (see notes 1, 2 and 4 in COB 6.7.18R):-;</p> <p>B. A<u>A</u>ppropriate personal pension which is a pension contract (see note 4 in COB 6.7.18R):-;</p> <p>C. S<u>S</u>ubscriptions (but see notes 1, and 2 and 5 in COB 6.7.18R) which can be invested only in <i>units</i> (whether or not held within an <i>ISA</i>, <i>PEP</i> or <i>pension contract</i>) in an <i>AUT</i>, <i>recognised scheme</i> or <i>ICVC</i> purchased from:</p> <p>(a) the <i>operator</i>; or</p> <p>(b) its <i>marketing group associate</i> acting as an <i>ISA manager</i> or <i>plan manager</i>:-;</p> <p>D. <u>distance contracts</u> (other than for a <i>life policy</i>, <i>stakeholder pension scheme</i>, <i>cash deposit ISA</i> or a contract in A, B or C) the making or performance of which by the <i>firm</i> constitutes or is part of:</p> <p>(a) <u>dealing as agent, advising or arranging in relation to designated investments</u>, unless the <i>distance contract</i> is concluded merely as a stage in the provision of another service by the <i>firm</i> or another <i>person</i> (see COB 1.10.6G); or</p> <p>(b) any other <i>designated investment business</i>; or</p> <p>(c) <u>accepting deposits</u>.</p>
Row 2	<p><u>There is</u> no right to cancel where any one or more of the following cases applies:</p> <p>1. T<u>T</u>he customer is not a <i>private customer</i> (<u>but see note 5 in COB 6.7.18R</u>):-;</p>
	<p>2. T<u>T</u>he agreement<u>agreement</u>-contract is entered into with the <i>firm</i> (and where relevant with any <i>independent intermediary</i>) as an <i>execution-only transaction</i> (unless note 4 <u>or note 5</u> in COB 6.7.18R applies):-;</p> <p>3. T<u>T</u>he agreement<u>agreement</u>-contract is entered into through a <i>direct offer financial promotion</i> (unless note 4 <u>or note 5</u> in COB 6.7.18R applies):-;</p> <p>4. T<u>T</u>he agreement<u>agreement</u>-contract represents an exchange of <i>units</i> between <i>sub-funds</i>:-;</p>

Cancellable investment agreements contracts and exceptions – non-life

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

	<p>5. The agreement contract represents a <i>defined benefits pension scheme</i> (but see note 5 in COB 6.7.18R):-</p> <p>6. The agreement contract is entered into under a <i>customer agreement</i> or during negotiations (which are not <i>ISA</i> or <i>PEP</i> related) intended to lead to a <i>client agreement</i> (unless note 4 or note 5 in COB 6.7.18R applies):-</p>
	<p>7. The agreement contract relates to an <i>ISA</i> or <i>PEP</i> for which the right to cancel is replaced by the right to withdraw (but see COB 6.7.14R(1) and note 5 in COB 6.7.18R):-</p>
	<p>8. The agreement contract relates to an <i>EIS</i> or non-packaged product <i>ISA</i> or <i>PEP</i> and is entered into, following <i>advice on investments</i>, and following an explanation <u>that neither of the rights specified in case 7 will apply</u>, given to the <i>customer</i> in accordance with COB 3.9.21R(2) (Direct offer financial promotions: Cancellation rights) or COB 4 Ann 2E(9)(a) 4.2.15E(10) (Terms of business and client agreements with customers) in a <i>direct offer financial promotion, terms of business</i>, or given in <i>EIS particulars</i>, that neither of the rights specified in case 7 will apply (but see note 5 in COB 6.7.18R):-</p>
	<p>9. The agreement contract entered into is a second or subsequent <i>ISA</i> (or <i>EIS</i>) on substantially the same terms (see note 3 in COB 6.7.18R) as an <i>ISA</i> (or <i>EIS</i>) purchased from the same <i>ISA manager</i> (or <i>EIS manager</i>) in the previous tax year (but see note 5 in COB 6.7.18R):-</p>
	<p>10. The agreement contract relates to a change from <i>accumulation units</i> to <i>income units</i> or vice versa, in the same <i>scheme</i>:-</p>
	<p>11. Pension contract funded (wholly or in part) from payments derived from compensation or redress paid by a <i>firm</i> following a review undertaken in relation to a complaint:-</p>
	<p>12. Pension contract or <i>stakeholder pension scheme</i> funded (wholly or in part) from payments derived from a <i>pension transfer</i> for which a right to cancel is replaced by a right to withdraw (see COB 6.7.14R(2)R) using the cancellation substitute in COB 6.7.19R:-</p>
	<p>13. The agreement contract relates to a <i>recognised scheme</i> and is with an <i>operator</i> who is not:</p>

Cancellable ~~investment agreements~~ contracts and exceptions – non-life

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

	<p>(a) an <i>authorised person</i>; or</p> <p>(b) carrying on business in the <i>United Kingdom</i>;</p>
	<p>14. The agreement contract relates or would relate to exported products, that is to say:</p>
	<p>(a) where the <i>customer</i> is not <i>habitually resident</i> in the <i>United Kingdom</i> (or, for a <i>distance contract</i>, <i>EEA</i>) at the date of the offer of the agreement contract; or</p>
	<p>(b) the <i>firm</i> has reasonable grounds for assuming that no <i>advice on investments</i> about the agreement contract was provided by anyone carrying on <i>designated investment business</i> in the <i>United Kingdom</i> (but see note 5 in COB 6.7.18R);</p> <p>15. <u>for distance contracts:</u></p> <p>(a) <u>the price depends on fluctuations in the financial market outside the <i>firm</i>'s control which may occur during the cancellation period, such as contracts related to:</u></p> <ul style="list-style-type: none"> (i) <u>foreign exchange; or</u> (ii) <u>money market instruments; or</u> (iii) <u>transferable securities; or</u> (iv) <u>units in collective investment undertakings; or</u> (v) <u>financial-futures contracts, including equivalent cash-settled instruments; or</u> (vi) <u>forward interest-rate agreements; or</u> (vii) <u>interest-rate, currency and equity swaps; or</u> (viii) <u>options to acquire or dispose of any instruments in (i) to (vii), including cash-settled instruments and options on currency and on interest rates; or</u> <p>(b) <u>the performance of the <i>distance contract</i> has been fully completed by both parties at the <i>customer</i>'s express request before the <i>customer</i> exercises his right to cancel;</u> or</p> <p>(c) <u>the <i>firm</i> has an initial service agreement with the <i>customer</i> and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see COB 1.10.2G).</u></p>

6.7.18 R Notes to cancellable ~~investment agreements~~ contracts and exceptions - non-life

This table belongs to COB 6.7.17R

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

6.7.19 R Cancellation substitute

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

Cancellation substitute	
The <i>retail customer's</i> right to cancel under COB 6.7.7R(1) or (4) is replaced by the 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 <u>30 days</u> in the case of a <i>life policy</i> and <u>14 days</u> in any other case before the contract is concluded, a written notice (see note 1) which prominently states:

Cancellation substitute	
(a)	that the <i>retail customer</i> has a <u>that</u> period of at least 14 days 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
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.
Note:	
1. The notice must be issued separately or feature prominently as part of the application form; <u>or suitability letter</u> or key features supplied to the <i>customer</i> .	

6.7.20 R ~~[deleted] Cancellation— cash deposit ISA~~

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

Cancellation— cash deposit ISA	
The <i>firm</i> must supply (or may reasonably rely upon another <i>firm</i> to supply) to the <i>retail customer</i> before the account is opened, a written notice (see note 1) which prominently states:-	
A.	That the <i>retail customer</i> has a 14 day period within which to consider whether or not to keep the account open;
B.	The dates at which the 14 day period begins and ends (see note 2);
C.	The options available (see note 3);
D.	How cancellation will operate in circumstances where the account forms part of a <i>maxi ISA</i> which contains other components (see <i>COB 6.7.37R</i>);
E.	the steps the <i>retail customer</i> must take to communicate any decision not to proceed with the account (see <i>COB 6.7.42R</i> to <i>6.7.46G</i>); and

Cancellation—cash deposit ISA

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

Notes:

1. The notice must be issued separately or feature prominently as part of the minimum information supplied to the *retail customer*.
2. Unless the *firm* has specified a longer period to the *retail customer*, the minimum expiry date is the end of the fifteenth day from the date the account was opened.
3. A *firm* must either assist the *retail customer* in switching accounts or refund all monies deposited together with interest.

Voluntary provisions

- 6.7.21 R If anything in column row 2 of either COB 6.7.15R or COB 6.7.17R removes the right to cancel a contract investment agreement, but a *firm* voluntarily gives the *retail customer* a right to cancel in any event, the *firm* must treat the agreement contract as if it were cancellable under COB 6.7.7R(1).
- 6.7.22 G (1) If the *firm* has any doubt whether a contract the investment agreement or the circumstances of its purchase bring the case within any part of COB 6.7.7R(1), it should treat the agreement contract as if it were cancellable.
- (2) A *firm* that informs a retail customer that he has sends a pre-sale notice or post-sale notice notice of a right to cancel where it is not obliged to give a right to cancel do so under COB 6.7.30R will be taken to have voluntarily granted the *retail customer* a right to cancel (unless, for the purposes of COB 6.7.17R, there is a relevant *client agreement* between the *firm* and the *retail customer*).

Variations

- 6.7.23 R (1) After an increase in regular or single *premiums* or payments (including a *pension transfer*) to a *life policy*, *pension contract* or *stakeholder pension scheme*, a *retail customer*, ~~who is an individual~~, has a right to cancel (see COB 6.7.7R(4)) in the following circumstances unless (2) applies:
- (a) any variation, other than a ‘pre-selected option’ (see COB 6.7.26G), providing for substantial increases in *premium* or payment where the increase:
- (i) is being paid by way of varying the existing agreement contract; or
 - (ii) will result in a new agreement contract established

on the same terms as the original ~~agreement~~
contract;

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

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

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

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

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

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

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

...

Electronic communication relating to cancellation and withdrawal

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

Time deadlines relating to cancellation and withdrawal

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

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

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

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

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

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

(2) (in any other case specified in COB 7.7.7R) no later than the end of the fourteenth day;

after the contract is concluded.

(1) before the agreement is concluded (a 'pre-sale notice'); and
(2) after the agreement has been concluded (a 'post-sale notice').

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

...

Pre-sale notices

6.7.32 R ~~[deleted]~~ A *pre-sale notice* must contain at least a summary of the information required in a *post-sale notice*.

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

relevant time.‘

Post-sale notices: general

6.7.34 R ~~[deleted]~~ A *post-sale notice* must be:

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

~~After the agreement is concluded;~~

- (3) ~~sufficiently clear, prominent (see COB 6.7.39R) and informative to enable the customer to exercise the right to cancel; and~~
 -
- (4) ~~accompanied by a slip or form (or an electronic equivalent) to enable the customer to exercise a right to cancel.~~

Post-sale notices: method of sending

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

Post-sale notices: content

6.7.36 R ~~[deleted]~~ A *post-sale notice* must state:

- (1) ~~That there is an agreement between the customer and the firm;~~
- (2) ~~That there is a right to cancel the agreement;~~
- (3) ~~the duration of the right to cancel and the date at which the right begins and ends;~~
- (4) ~~the steps the customer must take to cancel the agreement;~~
- (5) ~~the consequences of cancelling the agreement, including a prominent statement of any *shortfall* (see COB 6.7.54R) which the customer will have to bear;~~
- (6) ~~(as a prominent reminder) that the customer is entitled to key features and is advised to check with the firm if the key features have not been received (except in the case of *pure protection*~~

contracts); and

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

Post sale notices: ISAs

- 6.7.37 R ~~[deleted] In the case of ISAs, a firm must ensure that the slip or form in COB 6.7.34R(4) (1) will enable the customer to indicate whether the entire ISA agreement is to be cancelled or just a particular component or product.~~
- 6.7.38 G ~~[deleted] For example, in the case of a maxi-ISA, the customer:~~
- (1) ~~has to be able to cancel at the component (or underlying product) level and is not compelled to cancel other components (or products);~~
- (2) ~~needs to know that the effect of cancelling the last component has the effect of cancelling the entire ISA agreement and may also (where it is the case) delay the customer from entering into another ISA agreement until the next tax year.~~

Prominence of post-sale notice

- 6.7.39 R ~~[deleted] To comply with COB 6.7.34R(3), where the post-sale notice forms part of another document or is one of a number of documents sent to the customer at the same time, a firm must ensure that the presence of the post-sale notice is drawn to the customer's attention (see COB 6.7.40G).~~
- 6.7.40 G ~~[deleted] Where the post-sale notice forms part of a brochure or is included in a pack of documents, the front of the brochure or pack should prominently feature words such as: 'IMPORTANT: information about your right to cancel this agreement is enclosed'.~~

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

- 6.7.41 R If a firm does not send a post-sale notice when required by these rules give a retail customer information about his cancellation rights in accordance with COB App 1.1.1R(17), the contract remains cancellable and the retail customer can cancel the agreement at any time within two years of the agreement and will not be liable for any shortfall (see COB 6.7.56R(3)).

Exercising the right to cancel

- 6.7.42 R A retail customer who has a right to cancel under COB 6.7.7R may, without giving any reason, cancel the agreement contract by serving

notice upon the *firm*, before expiry of the relevant cancellation period either:

- (1) by post to the *firm*'s last known address; or
- (2) in accordance with any other practical instructions for exercising that right provided to the *customer* in accordance with COB App 1.1.1R (17)(b).

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

~~Valid notice of cancellation~~

- 6.7.44 R (1) ~~A notice of cancellation given by a *retail customer* is valid when it is served on, or otherwise sent by post to the *firm*'s last known address, addressed to the *firm*, its *appointed representative* or on any agent of the *firm* with authority to accept notice on the *firm*'s behalf.~~
- (2) ~~A *firm* must treat any notice of cancellation sent by prepaid post, or otherwise sent, and valid in accordance with COB 6.7.43R and COB 6.7.44R(1), as being served on the date it was posted or sent. Where the notice of cancellation is in a durable medium and served in accordance with COB 6.7.42R, it must be treated as being served on the *firm* on the date it is despatched by the *retail customer*.~~

...

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

...

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

...

Effects of cancellation

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

- (1) the entire agreement contract; or
- (2) the particular ISA component (~~see COB 6.7.37R~~); or

(3) the variation alone (see *COB* 6.7.23R(1));

is ~~rescinded~~ terminated.

Automatic cancellation of an attached distance contract

6.7.51A G Regulation 11 (Automatic cancellation of an attached distance contract) of the *Distance Marketing Regulations*, has the effect that when notice of cancellation is given in relation to a contract, that notice also operates to cancel any attached distance financial services contract which does not fall within one of the exceptions to the right to cancel in regulation 10. So the attached contract will not be cancelled if the price of the service depends on fluctuations in the financial market outside the *firm's* control or if performance of the contract has been fully completed by both parties at the consumer's express request.

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

(1) the *firm* must:

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

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

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

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

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

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

(ii) where performance of the contract has

commenced before expiry of the cancellation period, this was requested by the *retail customer*; and

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

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

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

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

and the *firm* is entitled to receive:

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

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

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

...

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

6.7.54 R ~~If a *firm* has sent a post-sale notice that satisfies the rules in COB 6.7 and the market falls during the cancellation period, s~~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 investment agreement specified in COB 6.7.57R.

Shortfall: worked example

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

Exceptions to shortfall

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

- (1) if the *firm* ~~does not give the *customer* sends the~~ notice of his cancellation rights pre-sale notice, or the post-sale notice, as later than required by the rules in COB App 1.1.1R (17) (whether the *retail customer's* cancellation notice is valid or not);
- (2) if the *firm* fails to make any prominent mention of *shortfall* in the information about cancellation pre-sale or post-sale notice;
- (3) if the *firm* has failed to send a *post-sale reminder* notice as required by COB 6.7.30R (2);
- (4) if the *customer* has served the cancellation notice before the contract agreement is concluded.

6.7.57 R Table: Contracts Investment agreements which are subject to shortfall
This table belongs to COB 6.7.54R

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

6.7.58 R Table: Calculation of shortfall
This table belongs to COB 6.7.54R

Calculation of shortfall	
A <i>firm</i> must calculate <i>shortfall</i> as at the 'relevant date' (see note 1) as follows:	
...	

Calculation of shortfall	
B.	take the equivalent payment that would have been quoted (see notes 3, 4 and 5) to the same <i>retail customer</i> assuming an identical purchase was made at the 'relevant date';
C.	add to the figure at B the amount of any income included in the figure at A (but originally excluded from the figure at B for the purposes of distribution to <i>retail customers</i>); and
...	
Notes:	
...	
2. If the agreement is a variation of a previous agreement contract (see <i>COB 6.7.23R</i>), the <i>firm</i> must treat the increase in <i>premium</i> as the sum in A.	
...	

...

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

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

...

...

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

...

...

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

...

10 Operators of collective investment schemes

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

...

...

After COB 12, insert the following new Appendix:

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

1.1.1 R Table Required information

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

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

Required information

(4)	<p>(a) For <i>authorised persons</i>:</p> <ul style="list-style-type: none"> (i) the required disclosure statement in <i>GEN 4 Ann 1R</i> (Statutory status disclosure); and (ii) the fact that the <i>person</i> is entered on the <i>FSA Register</i> and his <i>FSA</i> registration number. <p>(b) For <i>unauthorised persons</i>:</p> <ul style="list-style-type: none"> (i) where the <i>person's</i> activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority; and (ii) where the <i>person</i> is registered in a trade or similar public register, the trade register in which the <i>person</i> is registered and his registration number or an equivalent means of identification in that register.
The financial service	
(5)	A description of the main characteristics of the service the <i>firm</i> will provide.
(6)	The total price to be paid by the <i>customer</i> to the <i>firm</i> for its services, including all related fees, charges and expenses, and all taxes paid through the <i>firm</i> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>customer</i> to verify it.
(7)	Notice of the possibility that other taxes or costs may exist that are not paid through the <i>firm</i> or imposed by it.
(8)	Details of any specific additional cost to the <i>customer</i> for using a <i>means of distance communication</i> .

Required information

(9)	Where relevant, notice indicating that the service involves special risks related to its specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the <i>firm's</i> control and that past performance is no indicator of future performance.
(10)	Any limitations of the period for which the information provided is valid.
(11)	The arrangements for payment and performance.
The contract	
(12)	In relation to services performed permanently or recurrently, the minimum duration of the contract.
(13)	The <i>EEA State</i> or <i>States</i> whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>retail customer</i> prior to the conclusion of the contract.
(14)	Any contractual clause on law applicable to the contract or on competent court, or both.
(15)	The language in which the contract is supplied and in which the <i>firm</i> will communicate during the course of the contract.
(16)	Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.

Required information

(17)	<p>The existence or absence of a right to cancel under <i>COB 6.7</i> and, where there is such a right:</p> <ul style="list-style-type: none"><li data-bbox="469 353 1334 613">(a) its duration and the conditions for exercising it, including information on the amount which the <i>customer</i> may be required to pay (or which may not be returned to the <i>customer</i>) in accordance with <i>COB 6.7.52R(1)(b)</i>, as well as the consequences of not exercising it; and<li data-bbox="469 636 1334 837">(b) practical instructions for exercising the right to cancel, including as a minimum the method in <i>COB 6.7.42R(1)</i> and details of the address to which any cancellation notice should be sent.
Redress	
(18)	<p>How to complain to the <i>firm</i>, whether or not complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> and information about any other applicable named complaints scheme.</p>
(19)	<p>Whether or not compensation may be available from the <i>compensation scheme</i> should the <i>firm</i> be unable to meet its liabilities, and information about any other applicable named compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained. (See the example in <i>COB 5.5.11 G</i> (Investment firms: compensation information)).</p>

Annex B

Amendments to the Insurance: Conduct of Business sourcebook

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

ICOB Transitional provisions

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

...

- 4.7.1 R ~~Unless Subject to ICOB 4.7.2R applies,~~ an *insurance intermediary* or an *insurer* must not, in relation to a *non-investment insurance contract* that is a *distance contract*:
- (1) *advise on, arrange, enter into, ~~renew~~, carry out or assist in the administration and performance* of such a contract for a *retail customer* without a prior request on his part, when the supply of such a service includes a request for immediate or deferred payment; or
 - (2) enforce any obligation against a *retail customer* in the event of unsolicited supplies of such services, the absence of a reply not constituting consent.

- 4.7.2 R *ICOB 4.7.1R does not prevent an insurance intermediary or an insurer from exercising any right that he may have, by contract or otherwise, to renew a distance contract with a retail customer without any request made by or on behalf of that retail customer prior to the renewal of the contract apply for a tacit renewal of a distance contract.*
- 4.7.3 G (1) ~~ICOB 4.7.1R(1) prohibits an insurance intermediary (or an insurer when acting as product provider) from advising on, arranging, entering into, renewing, carrying out or assisting in the administration and performance of a non-investment insurance contract that is a distance contract for a retail customer without the prior consent of that retail customer. This prohibition in ICOB 4.7.1R includes the continuation of insurance after a specified period where the insurance has been free of charge to the retail customer during that period unless the retail customer has agreed before the period expires to pay for the insurance once the period has expired.~~
- (2) ~~Where the payment for the contract is made by regular instalments (for example, by direct debit), the effect of ICOB 4.7.2R is that an insurance intermediary (or an insurer when acting as product provider) will be required to seek the retail customer's consent on renewal to continue to provide insurance only if the contract does not give it the right to do so without further reference to the retail customer.~~
- (3) ~~The prior consent of the retail customer can either be express, or deduced from the circumstances of the case (for instance, by the retail customer providing an updated direct debit mandate to the firm).~~
- ...
- 8.4.1 R ~~Unless Subject to ICOB 8.4.2R applies, an insurance intermediary must not, in relation to a distance non-investment mediation contract:~~
- (1) ~~advise on, arrange, enter into, renew, carry out or assist in the administration and performance of such a contract for a retail customer without a prior request on his part, when the supply of such a service includes a request for immediate or deferred payment; or~~
- (2) ~~enforce any obligation against a retail customer in the event of unsolicited supplies of such services, the absence of a reply not constituting consent.~~
- 8.4.2 R *ICOB 8.4.1R does not prevent an insurance intermediary from exercising any right that he may have, by contract or otherwise, to renew a distance non-investment mediation contract with a retail customer without any request made by or on behalf of that retail customer prior to the renewal of the contract apply for a tacit renewal of a distance non-investment mediation contract.*

- 8.4.3 ~~G[deleted]~~ (1) Where the payment for the contract is made by regular instalments (for example, by direct debit), the effect of *ICOB* 8.4.2R is that an *insurance intermediary* will be required to seek the *retail customer's* consent on *renewal* to continue to provide mediation services only if the contract does not give him the right to do so without further reference to the *retail customer*.
- (2) The prior consent of the *retail customer* can either be express, or deduced from the circumstances of the case (for instance, by the *retail customer* providing an updated direct debit mandate to the *firm*).

Annex C

Amendments to the Mortgages: Conduct of Business sourcebook

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

- 4.5.4 R ~~Unless~~ Subject to MCOB 4.5.5R ~~applies~~, a *firm* must not:
- (1) *advise on, arrange, or enter into, or renew a distance mortgage mediation contract* with a *retail customer* without a prior request on his part, when the supply of such a service includes a request for immediate or deferred payment; or
 - (2) enforce any obligation against a *retail customer* in the event of unsolicited supplies of such services, the absence of a reply not constituting consent.
- 4.5.5 R *MCOB 4.5.4R* does not ~~prevent an *firm* from exercising any right that he may have, by contract or otherwise, to renew a distance contract with a retail customer without any request made by or on behalf of that retail customer prior to the renewal of the contract~~ apply for a tacit renewal of a distance contract.

Annex D

Amendments to the Market Conduct sourcebook

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

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

...

(3) *corporate finance business*; ~~or~~

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

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

Annex E

Amendments to the Authorisation manual

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

5 Ann 3 G

...

2 Table: G

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>COB</i>	<i>COB</i> applies.	<p>Where the activity:</p> <p>(1) <u>(a)</u> would fall within the <i>overseas persons</i> exclusions in article 72 of the <i>Regulated Activities Order</i>; or</p> <p>(b2) would not be regarded as carried on in the <i>United Kingdom</i>; or</p> <p>(c3) is not carried on with or for a <i>client</i> in the <i>United Kingdom</i>;</p> <p>then only the following apply:</p> <p>(d4) <i>COB</i> 3 (Financial promotion), but see the territorial scope in <i>COB</i> 3.3 (Where?);</p> <p>(e5) <i>COB</i> 5.5.7R and <i>COB</i> 5.5.8R (Overseas business); and</p> <p>(f6) <i>COB</i> 6.6 to <i>COB</i> 6.12, <i>COB</i> 6.7 and <i>COB</i> 6A.8 (Contents of key features, stakeholder pension schemes decision trees, Cancellation and withdrawal, Insurance contracts: life and general) <u>certain parts of <i>COB</i> 6 (Product disclosure and the</u></p>

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
<p>...</p> <p>ECO ...</p>	<p>ECO 2 applies if the <i>firm</i> is an <i>outgoing ECA provider</i>, ECO 3 applies if the <i>firm</i> is a <i>domestic ECA provider</i>, ECO 1 does not apply.</p>	<p><u>customer's right to cancel or withdraw</u>) but only in relation to <i>long-term insurance business</i> carried on with a <i>customer</i> habitually resident in the <i>United Kingdom</i> or if the <i>State of the risk</i> is the <i>United Kingdom</i> (see COB 1.4.7R and COB 1.4.8R) ;</p> <p>(2) <u>concerns a distance contract and is carried on with retail customers in the United Kingdom from an establishment maintained by the firm in an EEA State which:</u></p> <p>(a) <u>has implemented the DMD; or</u></p> <p>(b) <u>has obligations in its domestic law corresponding to those provided for by the DMD;</u></p> <p><u>COB 4.2, COB 5, and COB 6 do not apply.</u></p> <p>Otherwise, as column (2), (see COB 1.4.3R).</p> <p>ECO 1 applies if the <i>firm</i> is an <i>incoming ECA provider</i> <u>except for ECO 1.2.1R which does not apply if:</u></p> <p>(a) <u>the electronic commerce activity is not insurance business which:</u></p> <p>(i) <u>satisfies the conditions in ECO 1.2.3R; and</u></p> <p>(ii) <u>is carried on by an insurer; and</u></p> <p>(b) <u>the EEA State from which the activity is provided has implemented the DMD with the</u></p>

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
		<p><u>result that the obligations provided for by the <i>DMD</i> are applied when the <i>incoming ECA provider</i> is carrying on the activity from an <i>establishment</i> in that State with a <i>UK ECA recipient</i> in the <i>United Kingdom</i>.</u></p> <p><i>ECO 2</i> and <i>ECO 3</i> do not apply.</p>

Annex F

Amendments to the Credit Unions sourcebook

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

- 11.1.2 G (1) The *rules* and *guidance* set out in *COB* mainly apply to *designated investment businesses* and, as stated in *COB* 1.3.2G(2), have limited application to *deposits*.
- (2) The only parts of *COB* that sets out *rules* and *guidance* on *deposits*, other than for a cash deposit ISA, is that are those relating to *financial promotion* in *COB* 3 and those relating to distance contracts for accepting deposits in *COB* 2.6 (General provisions related to distance contracts), *COB* 6.7 (Cancellation and withdrawal) and *COB* 6.4.25R (Entering into a distance contract for accepting deposits). Guidance on the way in which those requirements apply to credit unions is set out in *CRED* 11.2 (Financial promotion) and *CRED* 11.4 (Entering into a distance contract for accepting deposits). These are summarised in *CRED* 11.2 (Financial Promotion).

...

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

...

After *CRED* 11.3, insert the following new section:

- 11.4 Entering into a distance contract for accepting deposits
- 11.4.1 G Those parts of *COB* that relate to *distance contracts* for *accepting deposits* will have limited application to *credit unions*. This is because the *DMD* only applies where there is “an organised distance sales or service-provision scheme run by the supplier” (Article 2(a)). If, therefore, the *credit union* normally operates face-to-face and has not set up facilities to enable *customers* to deal with it at a distance, such as facilities for a *customer* to deal with it purely by post, telephone, fax or the Internet, the provisions will not be relevant. A one-off transaction dealt with by distance means in order to deal with a particular contingency or emergency will not fall under the *COB* provisions.
- 11.4.2 G For those *credit unions* to which the provisions in *COB* will apply, the provisions which are of particular relevance concern the general provisions (*COB* 2.6), pre-contract information (*COB* 6.4.25R), cancellation rights

(COB 6.7) and financial promotion (discussed at CRED 11.2). If the *credit union* provides *cash deposit ISAs* further rules may apply.

Pre-contract disclosure requirements

- 11.4.3 G COB 6.4.25R sets out the basic requirement that applies before a *credit union* enters into a *distance contract* for *accepting deposits*. The *credit union* has to ensure that the terms on which it will conduct business, including, in particular, certain required information, is provided to a *retail customer* (which means an individual, acting for purposes which are outside his trade, business or profession) in good time (that is, in sufficient time to enable a *customer* to consider properly the services on offer) in a *durable medium*, before the *retail customer* is bound by the *distance contract*, unless certain exemptions apply.
- 11.4.4 G The required information is the contractual terms and conditions and the other information set out in COB App 1, and covers basic information about the *credit union*, the main characteristics of the service on offer, the price, details about the *distance contract* such as its duration, cancellation rights and any other early termination rights and penalties, and information about out-of-court complaints and compensation arrangements.

Exemptions

- 11.4.5 G The exemptions referred to in CRED 11.4.3G are set out in COB 6.4.25R. They are relevant:
- (1) where the contract is concluded by telephone and the *retail customer* gives explicit consent to receiving a more limited range of information. COB 6.4.27R sets out the information to be provided in such cases. Full information has to be provided, in a *durable medium*, immediately after conclusion of the *distance contract* (COB 6.4.25R(2));
 - (2) where a means of communication (other than telephone) is used which does not enable provision of the required information in a *durable medium* before conclusion of the contract; in this case full information must also be provided in a *durable medium* immediately after conclusion of the *distance contract* (COB 6.4.25R(3));
 - (3) where there is an initial service agreement and the contract is in relation to a successive or separate operation of the same nature under that agreement, or there is no initial service agreement and the contract is in relation to a successive or separate operation of the same nature and is being performed no more than one year from the date of performance of the last operation (see COB 1.10.2G).
- 11.4.6 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.

Cancellation

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

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

- (1) the price of the service depends on fluctuations in the financial market outside the *credit union's* control which may occur during the cancellation period; or
- (2) the contract has already been fully performed with the *retail customer's* consent before he exercises his right to cancel; or
- (3) the *credit union* has an initial service agreement with the *retail customer* and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see *COB* 1.10.2G).

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

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

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

...

Appendix 2.1
Detailed content of CRED

2.1.1 P Table:

...	
<i>11</i>	Conduct of business <i>11.1</i> Introduction <i>11.2</i> Financial promotion <i>11.3</i> Statutory status disclosure <i>11.4</i> <u>Entering into a distance contract for accepting deposits</u>
...	

Annex G

Amendment to the Electronic Commerce Directive sourcebook

In this Annex, underlining indicates new text.

Exceptions: regulated mortgage contracts

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

...

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

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

- (1) the activity is not insurance business which:
 - (a) satisfies the conditions in ECO 1.2.3R; and
 - (b) is carried on by an insurer; and
- (2) the EEA State from which the activity is provided has implemented the DMD with the result that the obligations provided for by the DMD are applied when the incoming ECA provider is carrying on the activity from an establishment in that State with a UK ECA recipient in the United Kingdom.

Annex H

Amendments to the Professional firms sourcebook

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

5.1.2 G This chapter:

...

(2) ...; ~~and~~

(3) ... ;

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

...

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

...

5.4 Application of the Distance Marketing Regulations

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

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

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

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

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

Annex I

Amendments to the Electronic money sourcebook

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

Distance marketing activities

- 1.1.5 G (1) *ELM 1.4A* sets out certain minimum requirements under the *Distance Marketing Directive* in respect of a *customer's* cancellation rights. These *rules* are supplemented by the requirements in *COB 6.7.42R* (Exercising the right to cancel); *COB 6.7.47R* (Record keeping); *COB 6.7.48R* (Cancellation notices served out of time) and *COB 6.7.51R* to *COB 6.7.53R* (Effects of cancellation) which all apply to *e-money firms*.
- (2) As set out in *ELM 6.8*, *COB 6.4.25R* applies to *e-money firms* as if references to '*issuing deposits*' and '*deposits*' were references to '*issuing e-money*' and '*e-money*' respectively.

...

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

1.4A Distance contracts: cancellation

Right to cancel

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

- (a) the performance of the *distance contract* has been fully completed by both parties at the *customer's* express request before the *customer* exercises his right to cancel; or
- (b) the *firm* has an initial service agreement with the *customer* and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see *COB 1.10.2G*).

Cancellation period

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

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

and lasts for 14 calendar days.

Failure to give information on cancellation rights

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

Exercising the right to cancel

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

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

...

1.5.2 G

Table: Application of other parts of the Handbook to ELMIs

Block	Module	Application
...		
Block 2 (Business Standards)	... Conduct of Business sourcebook (COB)	... <u>The effect of :</u> <u>(1) <i>ELM</i> 6.8.2AR is that <i>COB</i> 2.6 (General provisions in relation to distance contracts) applies;</u> <u>(2) <i>ELM</i> 1.4A.5R is that <i>COB</i> 6.7.47R; <i>COB</i> 6.7.48R and <i>COB</i> 6.7.51R to <i>COB</i> 6.7.53R apply; and</u> <u>(3) <i>ELM</i> 6.8.2AR is that <i>COB</i> 6.4.25R (Entering into a distance contract for accepting deposits) applies in relation to <i>distance contracts</i> concluded with <i>retail customers</i> as if references to '<i>accepting deposits</i>' and '<i>deposits</i>' were references to '<i>issuing e-money</i>' and '<i>e-money</i>' respectively.</u> <u>Otherwise, <i>COB</i> does not apply to an <i>ELMI</i> when issuing e-money. ...</u>

6.8 Information

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

...

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

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

...

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

Annex J

Amendments to the Glossary of definitions

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

(1) New definitions:

Insert the following new definition in the appropriate alphabetical position:

<i>distance contract</i>	any contract concerning financial services, the making or performance of which constitutes or is part of a <i>regulated activity</i> , concluded under an organised distance sales or service provision scheme run by the contractual provider of the service who, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more <i>means of distance communication</i> up to and including the time at which the contract is concluded.
<i>Distance Marketing Directive</i>	The Directive of the Council and Parliament of 23 September 2002 on distance marketing of consumer financial services (No 2002/65/EC).
<i>Distance Marketing Regulations</i>	The Financial Services (Distance Marketing) Regulations 2004 (SI 2004/[]).
<i>DMD</i>	<i>Distance Marketing Directive</i> .
<i>durable medium</i>	(a) paper; or (b) (in accordance with article 2(f) of the <i>Distance Marketing Directive</i> and article 2(12) of the <i>Insurance Mediation Directive</i>) any instrument which enables the recipient to store information in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored; this includes, in particular, floppy disks, CD-ROMs, DVDs and the hard drive of the recipient's computer on which electronic mail is stored, but not Internet websites unless they fulfil the criteria in this definition.
<i>means of distance communication</i>	(in accordance with article 2(e) of the <i>Distance Marketing Directive</i>) any means used for the distance marketing of a service between parties which does not involve the simultaneous physical presence of those parties.
<i>retail customer</i>	(in accordance with the meaning of 'consumer' in article 2(d) of the <i>Distance Marketing Directive</i>) an individual who is acting for purposes which are outside his trade, business or profession.

(2) Amendments to current definitions in the Glossary:

Amend the following definitions as shown:

<p><i>inter-professional business</i></p>	<p>... (b) but excluding the carrying on of the following activities: ... (v) <u>concluding a distance contract with a retail customer.</u> ...</p>
<p><i>private customer</i></p>	<p>(1) (except in <i>COB</i> 3, 4.2 and 6.4) (3) <u>(in <i>COB</i> 4.2 and 6.1 to 6.5) a person in (1) and, in relation to the conclusion of a distance contract, a retail customer.</u></p>
<p><i>terms of business</i></p>	<p>a written statement, supplied to a client, <u>in a durable medium</u> of the terms and conditions on which a firm will conduct <i>designated investment business</i> with or for the <u>a client or retail customer.</u></p>