

Polarisation Rules

All firms

Introduction

In January 2001 the FSA consulted on proposed changes to its rules governing polarisation in Consultation Paper 80, *Reforming Polarisation: First Steps*. The FSA has designated rules in respect of SROs. The effect of designation is that the FSA's rules apply directly to firms which are members of the PIA (and members of the other SROs). The PIA rules have not been changed directly and nor will PIA be producing rules of its own. Instead, the FSA's designated rules will modify the effect of the PIA's own rules. This regulatory update explains how the PIA rules have been affected and what the changes require firms to do. It also reminds firms of the obligations that remain in place.

For the avoidance of doubt, where there may be any conflict between the designated rules and the PIA's rules, the designated rules will prevail. The designated rules are issued with this regulatory update.

There are two new key concepts introduced by the designated rules:

- the introduction of the “adopted packaged product”;
- the relaxation of the rules on distribution and marketing by direct offer advertising.

Product companies are now permitted to “adopt” into their product range stakeholder pension schemes manufactured by companies outside of their marketing group. For the purposes of the designated rules these products are defined as “adopted packaged products”. Product companies may be able to delegate their ability to adopt packaged products to a marketing associate within its marketing group.

A product company and its marketing associate are now permitted to approve and issue direct offer advertisements for all “packaged products” provided the direct offer advertisement contains no advice. They are also permitted to approve direct offer advertisements of their appointed representatives for all packaged products provided the direct offer advertisement contains no advice. Similarly they may issue and approve direct offer advertisements for their “adopted packaged products” but it is permissible for these advertisements to contain advice.

The following paragraphs explain the modification requirements of the FSA's designated rules and each rule is cross-referenced, where relevant, to the affected PIA rule.

The rules come into effect on 29 March 2001.

Impact on IFAs

These rules do not affect IFAs. Independent practitioners are not required to amend their terms of business.

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Impact on product providers

These rules have no effect on product providers unless they choose to take advantage of the opportunities created by the new rules. If they do not take advantage of the changes they will not have to amend their terms of business as described on pages 6-7.

The new rules

Rule 2.01(1) permits a firm which is a product company to give advice on adopted packaged products as well as the packaged products of its marketing group. An adopted packaged product is a stakeholder pension scheme which is not manufactured within the firm's marketing group, and on which the firm has taken a formal decision to provide advice. The designated rules set no limit on the number of products which may be adopted and do not set out any criteria for the selection of products to be adopted.

Following consultation, some product companies took the view that they are restricted in their ability to advise on the products of another manufacturer because of the potential difficulties created by section 16 of the Insurance Companies Act 1982 and its equivalent provisions in section 83 of the Financial Services Act 1986 and Schedules 2 and 7 of the Friendly Societies Act 1992. Generally, the concept of subsidiarisation meets these concerns, e.g. the sales force of a company is employed by or contracted to a subsidiary company which is a marketing associate of the product company life office. A product company may delegate the task of adopting a packaged product to its marketing associate. The decision of the marketing associate to adopt a packaged product will bind the company representatives and the appointed representatives of the product company. Regardless of whether a product company has delegated the power to adopt a packaged product to its marketing associate, it must modify the "section 44 agreement" with its appointed representatives to take account of any adopted packaged products. If a "section 44 agreement" exists between the marketing associate and its appointed representatives, that would need to be modified to take account of adopted packaged products. For the avoidance of doubt, "marketing associate" has the meaning given to it in the PIA rules.

Rule 2.01(2) includes within the concept of adopted packaged products those manufactured by an overseas regulated insurer. Overseas regulated insurers are insurers who are authorised to carry on long term insurance business in Guernsey, Jersey, the Isle of Man, and the United States of Iowa and Pennsylvania. However, any product company adopting such products must take steps to ensure that it has no reason to doubt that the overseas regulated insurer will deal with customers in the UK in an honest and reliable way.

Rule 2.01(3) requires any firm which is a member of a marketing group of a product company which has adopted a packaged product to provide advice on those adopted packaged products. (Cross-reference LAUTRO adopted rule L3.2).

Rule 2.01(4) requires a firm within a marketing group to inform private customers on a timely basis that they are able to advise on the products adopted from other manufacturers. The information should be given sufficiently early in the contact with the customer to ensure that they can take it into account when judging the advice they receive. Firms should also ensure as far as possible that there is no possibility of their ability to advise on adopted packaged products being construed as meaning that the advice is independent. (Cross-reference PIA rule 4.2.1).

- Rule 2.01(5)** requires a firm within a marketing group advising a private customer on his portfolio of investments, which may include packaged products, to inform the customer in advance that the firm is only able to recommend or advise on the packaged products or adopted packaged products of its marketing group.
- Rule 2.01(6)** requires a firm advising on adopted packaged products to make clear that the firm and not the manufacturer of the product is responsible for the advice given. The firm must also make clear who is responsible for handling complaints, and that the manufacturer is responsible for the product terms and conditions. It would be appropriate for firms to arrange formal complaint handling service level agreements between the manufacturer and the adopting firm. (Cross-reference PIA rule 8.1, 8.2 and 8.3).
- The adopting firm must also disclose any charges imposed by it in excess of those charged by the manufacturer of the product (cross-reference PIA rule 4.5 including Table 4 and LAUTRO adopted rules L5A.7, L5.11(1) and Schedule L:2 para. L6C.). Were charges to exceed 1%, it would lead to a breach of the PIA rules on misleading advertising if a product were promoted as a stakeholder pension. (Cross-reference LAUTRO adopted rule L6.6).
- Rule 2.01(7)** makes requirements on the timeliness of the communication to the customer of the matters dealt with in rule 2.01(6). The information should be conveyed at first point of contact with the customer. Where the first point of contact is by word of mouth, the information should be conveyed in writing as soon as possible afterwards. (Cross-reference PIA rule 4.2.4).
- Rule 2.01(8)** requires firms within a marketing group to ensure that their representatives and agents have adequate knowledge to give advice on adopted packaged products. (Cross-reference LAUTRO adopted rules L3.2 (2) and L3.2 (4) (d)).
- Rule 2.01(9)** requires firms within a marketing group to take reasonable steps to ensure that their representatives only provide advice on the packaged products and adopted packaged products of the marketing group. (Cross-reference LAUTRO adopted rule L3.2(1)).
- Rule 2.01(10)** requires firms advising on adopted packaged products to disclose in written and word of mouth communications with customers, that they may give advice on the packaged products adopted by the marketing group. Where applicable, the disclosure statement in a firm's terms of business must be amended appropriately. Firms are referred to the guidance under PIA rule 4.5.1 in this regulatory update.
- Firms are not required to make similar disclosure statements on the business cards of their representatives, their stationery, in broadcast advertising or at their premises but are not prohibited from so doing provided that any disclosure statements are clear, fair and not misleading. (Cross-reference PIA rules 4.2.2, 4.4.3, 4.4.4, 4.4.6 and 4.5 including Table 4).
- Rule 2.01(11)** requires that where a firm can recommend an adopted packaged product, it should recommend the most suitable product from amongst those available within the marketing group and the adopted packaged products on which it has decided to advise. (Cross-reference LAUTRO adopted rules Schedule L:2 para. L8.).
- If the same products within a class are priced differently a company representative must recommend the cheaper version. However, if the cheaper product is only available through a different distribution channel the company representative is not prohibited from recommending the product that is available to him. (Cross-reference LAUTRO adopted rules Schedule L:2 para.L8.(3)(c)).

Rule 2.01(12) requires firms with appointed representatives to take reasonable steps to ensure that their representatives only act as appointed representatives for principals within the same marketing group. Regardless of whether a product company has delegated the power to adopt a packaged product to its marketing associate, it must modify the “section 44 agreement” with its appointed representatives to take account of any adopted packaged products. If a “section 44 agreement” exists between the marketing associate and its appointed representatives, that would need to be modified to take account of adopted packaged products. For the avoidance of doubt, “marketing associate” has the meaning given to it in the PIA rules.

Rule 2.01(13) provides that firms within a marketing group may use the key features document of the product manufacturer when they advise on an adopted packaged product. The key features must be “appropriate”, therefore, if the terms of the adopted packaged product are different from the terms of the product for which the key features was originally prepared, e.g. there are additional charges, then the key features must be amended.

A product company or its marketing associate which adopts a packaged product may produce its own key features but in practice the PIA presumes firms will use the product manufacturer’s key features. Product companies or marketing associates producing their own key features would have to take responsibility for them.

It will not be possible for firms to use solely their own logo on any product they adopt. Co-branding is acceptable provided the logo of the adopting company is of no greater prominence than that of the manufacturer. The branding should not leave the customer in any doubt about whose product they are being offered. The logo of the manufacturer whose product is adopted may appear on its own.

Rule 2.01(14) requires that where a firm discloses the amount of remuneration or commission it receives from the manufacturer for selling an adopted packaged product, it should include all cash payments, benefits and services provided by the manufacturer irrespective of whether those amounts are actually passed onto the representatives of the firm. This rule requires the disclosure of onward payments to representatives.

Rule 2.02(1) permits a product company or its marketing associate to issue and approve direct offer advertisements promoting any packaged product provided that the direct offer advertisement does not contain advice. (Cross-reference PIA rule 4.2.3).

A product company or marketing associate which has appointed an introducer firm may make available for distribution by the introducer firm any advertisement approved by a firm within the marketing group. (Cross-reference PIA rule 3.5).

Rule 2.02(2) permits a product company or its marketing associate to issue and approve direct offer advertisements containing advice about its adopted packaged products.

If a product company or marketing associate wishes to issue and approve a direct offer advertisement for a stakeholder pension product without advice, it is not necessary for the firm to “adopt” the product. If a firm does adopt a packaged product it must make it available for sale by its representatives.

How the Designated Rules affect PIA rules and LAUTRO adopted rules

The purpose of this section of the Regulatory Update is to help firms identify how the two sets of rules work together. The rules referred to below are the ones cross-referred to above. None of the PIA rules or LAUTRO adopted rules has been revoked. In the event of any conflict between those rules and the designated rules, the designated rules will prevail.

- PIA rule 3.5** permits an introducer firm to effect introductions and distribute the advertisements of the Member. This rule is not affected by the designated rules.
- PIA rule 4.1** requires that “anything” a Member says and writes or any document sent, given or shown to an investor, or a potential investor must be clear, fair and not misleading, either in design or content. This rule is not affected by the designated rules.
- PIA rule 4.2.1(2)** restricts advice to packaged products of one product provider or marketing group. The designated rules have the effect of widening the scope of this rule to include advice on adopted packaged products including advice in direct offer advertising for these adopted packaged products.
- PIA rule 4.2.2** requires product providers, marketing associates and appointed representatives to disclose in premises that they may only advise on packaged products of the Member or of its marketing group. The designated rules do not require firms to disclose in premises that they can advise on adopted packaged products. However, where firms choose to disclose this they should bear in mind the overall requirements laid down in PIA rule 4.1.
- PIA rule 4.2.3(2)** requires product providers, marketing associates and appointed representatives to ensure that their advertisements must, where they refer to packaged products, disclose that any advice or recommendation given or offered in the advertisement is confined to the packaged products of the Member or of its marketing group. The designated rules have the effect of easing this restriction to include adopted packaged products.
- PIA rule 4.2.3(3)** requires product providers, their marketing associates and appointed representatives, and any members of their marketing group, where they refer in an advertisement to a packaged product or a service provided not by the Member but by a member of its marketing group, to ensure that the advertisement makes clear that the product or service is not that of the Member but that of another member of the marketing group. The designated rules have the effect of modifying this requirement to make clear that where adopted packaged products are offered, the manufacturer responsible for supplying them is identified in the advertisement.
- PIA rule 4.2.3(4)** requires that where an advertisement issued by an appointed representative refers to a packaged product or service provided by the Member or a member of its marketing group, the Member must ensure that the advertisement makes clear that the product or service is not that of the appointed representative. The designated rules have the effect of modifying the requirement on the Member to any adopted packaged product which they may also offer.

- PIA rule 4.2.4(1)** requires introducers or representatives of a product provider or marketing associate to state the name of the Member and identify themselves as an introducer or representative upon the first meeting or telephoning an investor or potential investor. They must also make clear that the Member provides advice only on the packaged products of the Member or of its marketing group. The designated rules have the effect of widening this responsibility to include disclosure about any adopted packaged products the Member may choose to sell and the identity of their manufacturer.
- PIA rule 4.4.3** makes provisions for disclosure on business cards for investment staff. If a Member were to adopt a wide range of stakeholder pensions it would become impractical to disclose on a business card all the adopted packaged products on which a representative could advise. In consequence the designated rules contain no provisions about disclosure of adopted packaged products for business cards. Firms are not prohibited from incorporating a disclosure statement for adopted packaged products however, they should bear in mind the overall requirements laid down in PIA rule 4.1.
- PIA rule 4.4.4** makes requirements for general stationery. If a Member were to adopt a wide range of stakeholder pensions it would become impractical to disclose on its stationery all the adopted packaged products on which a firm could advise. In consequence the designated rules contain no provisions about the disclosure of adopted packaged products in respect of stationery. Firms are not prohibited from incorporating a disclosure statement for adopted packaged products however, they should bear in mind the overall requirements laid down in PIA rule 4.1.
- PIA rule 4.4.6** makes requirements for the stationery of appointed representatives. If a member were to adopt a wide range of stakeholder pensions it would become impractical to disclose on its stationery all the adopted packaged products on which an appointed representative could advise. In consequence the designated rules contain no provisions about the disclosure of adopted packaged products in respect of stationery. Firms are not prohibited from incorporating a disclosure statement for adopted packaged products however, they should bear in mind the overall requirements laid down in PIA rule 4.1.
- PIA rule 4.5.1** makes requirements for the contents of terms of business. Some of the disclosure statements in Table 4 are no longer appropriate for firms taking advantage of the designated rules. The statement at the beginning of Table 4 (page 109) is the authority for varying the terms of the disclosure statements. The following is an example of how the first disclosure statement should be appropriately amended for firms which have adopted packaged products:

(Product Providers)

REGULATOR'S STATEMENT

Those who advise on life assurance, pensions or unit trust products are

- EITHER representatives of one company who additionally may advise on the products of certain other specified companies
- OR independent advisers

Your adviser represents X and acts on its behalf. X also sells the products of some other companies that your adviser will explain to you. This does not make your adviser independent. Because your adviser is not independent he or she cannot advise you on the purchase of life assurance, pensions and unit trusts beyond those offered by X and those it sells in addition to its own.

The subsequent disclosure statements in Table 4 for marketing associates, members of a marketing group and appointed representatives of a product provider may all be modified to cope with adopted packaged products using the alternative model above. Independent practitioners are not required to amend their terms of business.

Paragraph (5) of Section I of Table 4 requires a statement of products and services provided by the Member. Firms are permitted to refer to other services not regulated under the Act but this must be in a separate paragraph. As the case may be, adopted packaged products should be included in the first statement. The resulting example wording is:

PRODUCT PROVIDERS

- *The product range of [the Member] includes life assurance, personal pensions, unit trusts and ISAs. [[The Member] can also advise on the stakeholder pensions of certain other providers but this advice is not independent.]*

PIA rules 8.1, 8.2 and 8.3 require firms to establish and maintain a complaints procedure. The designated rules have the effect of widening the scope of these rules to include adopted packaged products.

LAUTRO adopted rules L3.2 (1), (2), (5) and (6) make provisions for the avoidance of product bias. These provisions do not change.

LAUTRO adopted rule L3.2(4) creates polarisation requirements on Members. These provisions are changed by the designated rules. The restriction in L3.2(4)(a) is relaxed to allow the company representatives and appointed representatives of Members to advise on adopted packaged products. Similarly, the restriction in L3.2(4)(b) is relaxed to allow a Member's investment contracts which are adopted packaged products to be sold by other Members who are not independent practitioners.

LAUTRO adopted rule L3.4 continues to apply but compliance with the Code of Conduct will have to take account of any adopted packaged products within a marketing group's range. **LAUTRO adopted Schedule L:2 Code of Conduct for Members, Company Representatives and Introducers** makes provisions for conduct. Schedule L:2, L3.(3)(b) requires representatives to explain their polarisation status at meetings with investors. The designated rules change this requirement where adopted packaged products are offered. Where this is the case, it should be explained having regard for the intent of Schedule L:2, L3.(3)(b). Schedule L:2, L8.(1)(b) restricts the company representatives of Members to recommending contracts from within a marketing group. The designated rules modify this restriction to the extent that a product provider Member sells adopted packaged products. Likewise, Schedule L:2, L8.(2) and L8.(3) are modified to the extent that the product provider Member sells adopted packaged products. Schedule L:2, L13.(1) and (2) also impose marketing group restrictions and the designated rules modify these restrictions to the extent that a product provider Member sells adopted packaged products.

LAUTRO adopted rule L3.15 makes provision for informing investors of the reasons for a recommendation: "reason why" letters. These provisions are largely unaffected by the designated rules. However, firms will need to take care where they have adopted stakeholder pensions in particular. The guidance in footnote 3 issued in November 2000 remains good but access to a stakeholder pension will include access to an adopted packaged product.

LAUTRO adopted rules L5.11 and L5A.7 and Schedule L:2 para. L6C. make provisions for the disclosure of remuneration and commission. These provisions are supplemented by designated rule 2.01(6)(c) which, in respect of adopted packaged products and direct offer advertising, requires Members to disclose any charges they impose in excess of those charged by the provider of the adopted packaged product. This means that the written statement required by L5A.7 (2) should be expanded to contain this information. Further, the oral statement required by L5A.7(2) should be similarly expanded.

LAUTRO adopted rule L6.6 makes provisions for the contents, design and format of advertisements. These provisions are unaffected by the designated rules.

Use of decision trees for Stakeholder pension schemes

Firms will need to exercise care in setting the scope of their service to customers in the marketing of Stakeholder pension schemes. There are boundaries to be observed between what constitutes:

- i) the giving of advice;
- ii) the use of decision trees and “tree-walking”;
- iii) direct offer advertising.

The use of decision trees and “tree-walking” for stakeholder pension schemes will not necessarily constitute advice. However, where advice is given, the designated rules will apply. Where they do not apply, firms are reminded of the provisions of PIA rule 2.6.1(2) about supervision of staff who are not designated individuals and help customers by explaining the decision tree process. An implication of this is that firms are responsible for complaints arising from the giving of such help.

Where their use does constitute advice, stakeholder pension schemes will have to be adopted. If the firm restricts itself to not giving advice adoption will not be necessary.

The Financial Services (Conduct of Business) (Modification of Polarisation) Rules 2001

The Financial Services Authority (the 'Authority'), in exercise of the powers conferred by section 48 and 63A of the Financial Services Act 1986 (the 'Act') and now exercisable by the Authority, hereby makes the following rules:

PART 1

Introduction

1.01 Citation and Commencement

These rules, the Financial Services (Conduct of Business)(Modification of Polarisation) Rules 2001 are made on 15 March 2001 and shall come into force on 29 March 2001.

1.02 Purpose

- (1) The purpose of these rules is to make changes to the conduct of business provisions concerning polarisation and designate them to apply to members of SROs.
- (2) In the event of any conflict between the Financial Services (Conduct of Business) Rules 1990 (the '1990 rules') and these rules, these rules will prevail.

1.03 Designation

- (1) These rules are designated under section 63A of the Act so as to apply to members of an SRO.
- (2) In the event of any conflict between the rules of an SRO and these rules, these rules will prevail.

PART 2

Modification of polarisation in the 1990 rules

2.01 Modification of polarisation where product companies and members of their marketing group advise on stakeholder pension schemes.

- (1) A firm which is a product company may choose to adopt an adopted packaged product.
- (2) The adopted packaged products which a product company may choose to adopt include packaged products provided by an overseas regulated insurer, provided that the product company has no reason to doubt that the overseas regulated insurer will deal with customers in the United Kingdom in an honest and reliable way.
- (3) Once a product company in a marketing group has adopted an adopted packaged product, any firm which is a member of the marketing group of a product company must also provide advice on those packaged products adopted by the product company.
- (4) Where a firm within (1) or (3) is able to provide advice on adopted packaged products, it must ensure that private customers are informed on a timely basis that the firm may give advice on adopted packaged products.
- (5) Where a firm which is a member of a marketing group is advising a private customer and the customer's portfolio may include packaged products, the firm must inform its customer in advance whether it will act for him on the basis that it may recommend or acquire a packaged product which is only available from the marketing group to which the firm belongs, or where adopted packaged product will also be included.
- (6) A firm which is a product company or a member of its marketing group shall, if it advises a private customer to buy an adopted packaged product, ensure that it does so only in accordance with arrangements under which the firm clearly indicates that:
 - (a) the firm, and not the provider of the adopted packaged product, is responsible for the advice given;
 - (b) the provider of the adopted packaged product is responsible for the relevant terms and conditions; and
 - (c) the firm discloses any charges imposed by the firm in excess of those charged by the provider of the adopted packaged product.
- (7) A firm that advises private customers on adopted packaged products must ensure that private customers are informed of the arrangements set out in (6) above:
 - (a) at the point of first contact with the customer; and
 - (b) where the point of first contact is oral, on a timely basis in writing thereafter.
- (8) A firm which is a product company or a member of its marketing group must take reasonable steps to inform itself and relevant agents about packaged products available from the marketing group and, where relevant, the adopted packaged products on which advice can be given.

- (9) A firm which is a product company or a member of its marketing group must take reasonable steps to ensure that its company representatives and appointed representatives provide advice only on packaged products which are:
- (a) those of the marketing group; or
 - (b) adopted packaged products on which advice can be given.
- (10) Where a firm which is a product company decides that it, or any member of its marketing group, will provide advice to a private customer on adopted packaged products, it must take reasonable steps to ensure that any oral communication with the private customer, or communication with a private customer via a direct offer advertisement, or any disclosure in a firm's terms of business with a private customer by the firm, any member of its marketing group or relevant agents makes clear that advice can be given on adopted packaged products.
- (11) Where a firm is a product company or a member of its marketing group and makes a specific recommendation to a private customer to buy a packaged product, it must take reasonable steps to ensure that, where the firm can advise on adopted packaged products:
- (a) the recommended packaged product is the most suitable of those available from the marketing group and the adopted packaged products; and
 - (b) no such recommendation is made if there is no suitable packaged product or adopted packaged product available in the marketing group which would secure the private customer's objectives more advantageously.
- (12) Where a firm has accepted responsibility for advice given by an appointed representative in respect of adopted packaged products, it must take reasonable steps to ensure that the appointed representative does not act as an appointed representative for any principal outside the principal's marketing group.
- (13) A firm which is a product company or a member of its marketing group need not produce key features for an adopted packaged product on which advice can be given by the firm if it provides to private customers appropriate key features produced by the product company responsible for issuing the adopted packaged product.
- (14) Where a firm discloses the amount of remuneration receivable or payable by it in respect of an adopted packaged product, it must include all cash payments, benefits and services.

2.02 Advertisements

- (1) Subject to (2), a firm which is a product company or a member of its marketing group may issue or approve a direct offer advertisement which advertises a packaged product of a product company which is not within the firm's marketing group.
- (2) A firm must not issue or approve an advertisement within (1) which contains advice about the packaged product, unless the packaged product is an adopted packaged product on which the firm can provide advice.

PART 3

Glossary

3.01 In these rules, the following expressions have the following meanings:

‘adopted packaged product’ means a stakeholder pension scheme which is not that of the firm’s marketing group, and on which the firm if a product company (or, where the firm is not a product company, a product company in the firm’s marketing group) has taken a formal decision to provide advice;

‘advice’ includes, where applicable, a firm’s management of a private customer’s account or portfolio in the exercise of discretion;

‘company representative’, in relation to a firm or an appointed representative (whether the firm or the appointed representative is a company or not) means an individual who is:

- (a) the firm itself or the appointed representative himself, as the case may be, if the firm or the appointed representative is a sole trader, or
- (b) an employee, partner or officer of the firm or of the appointed representative as the case may be,

and whose activities include procuring or endeavouring to procure other persons to enter into investment agreements or giving advice to the persons with whom he deals about investment agreements, selling investments, or exercising rights conferred by investments;

‘customer’ does not include a market counterparty or a trust beneficiary but includes:

- (a) a potential customer;
- (b) an indirect customer; and
- (c) a customer of an appointed representative of a firm with or for whom the representative acts in the course of business for which the firm has accepted responsibility;

‘direct offer advertisement’ means a specific investment advertisement (including a pre-printed or off-the-screen advertisement) which:

- (a) contains:
 - (i) an offer by the firm or another offeror to enter into an investment agreement with anyone who responds to the advertisement; or
 - (ii) an invitation to anyone to respond to the advertisement by making an offer to the firm or another offeree to enter into an investment agreement; and
- (b) specifies the manner or indicates a form in which any response is to be made (for example by providing a tear-off slip);

‘indirect customer’ means, where a customer is known to be acting as agent, an identified principal who would be a customer if he were dealt with direct;

‘investment manager’ means a person who, acting only on behalf of a customer, either:

- (a) manages an account or portfolio in the exercise of discretion; or
- (b) has accepted responsibility on a continuing basis for advising on the composition of the account or portfolio;

‘investment services’ means activities undertaken in the course of carrying on investment business;

‘investment trust savings scheme’ means a dealing service dedicated to the securities of a particular investment trust or of investment trusts within a particular marketing group (and references to an investment trust savings scheme include references to securities to be acquired through that scheme);

‘key features’ has the meaning given in the PIA rulebook as at the date of these rules;

‘life policy’ means an investment falling within paragraph 10 of Schedule 1 to the Act;

‘market counterparty’ means a person dealing with the firm:

- (a) as principal or as agent for an unidentified principal; and
- (b) in the course of investment business of the same description as that in the course of which the firm acts;

‘marketing group’ means a group of persons who:

- (a) are allied together (either formally or informally) for purposes of marketing packaged products of the group; and
- (b) each of whom, if it holds itself out in the United Kingdom as marketing any packaged products to private investors, does so only as an investment manager or in relation to those of the marketing group;

‘ordinary business investor’ means:

- (a) a government, local authority or public authority within the meaning of Schedule 1 to the Act;
- (b) a company or partnership which satisfies any of the following size requirements:
 - (i) that it is a body corporate which has more than 20 members (or is the subsidiary of a company which has more than 20 members) and it (or any of its holding companies or subsidiaries) has a called up share capital or net assets of £500,000 or more;
 - (ii) that it is a body corporate and it (or any of its holding companies or subsidiaries) has a called up share capital or net assets of £5 million or more; or
 - (iii) if it is not a body corporate, it has net assets of £5 million or more; or
- (c) a trustee of a trust which satisfies either of the following size requirements:
 - (i) that the aggregate value of the cash and investments which form part of the trust’s assets (before deducting the amount of its liabilities) is £10 million or more; or
 - (ii) that that aggregate value has been £10 million or more at any time during the previous two years;

‘overseas regulated insurer’ means a company authorised to carry on long term insurance business in any of the following countries or territories:

- (a) The Bailiwick of Guernsey;
- (b) The Bailiwick of Jersey;
- (c) The Isle of Man;
- (d) The Commonwealth of Pennsylvania; and
- (e) The State of Iowa;

‘packaged product’ means a life policy, a unit in a regulated collective investment scheme or an investment trust savings scheme;

‘private customer’ means:

- (a) a customer who is an individual and who is not acting in the course of carrying on investment business; or
- (b) unless he is reasonably believed to be an ordinary business investor, a customer who is a small business investor;

‘product company’ means:

- (a) in relation to a life policy, the life office by which that policy is issued;
- (b) in relation to units in a regulated collective investment scheme, the operator of that scheme;
- (c) in relation to an investment trust savings scheme, the operator of that scheme;

‘small business investor’ means:

- (a) a company or partnership; or
- (b) a trustee acting for a trust

which does not satisfy a size requirement enabling the company, partnership or trustee to be treated as an ordinary business investor;

‘specific investment advertisement’ means an investment advertisement which identifies and promotes a particular investment or particular investment services;

‘stakeholder pension scheme’ means a scheme established in accordance with Part 1 of the Welfare and Pensions Reform Act 1999 and the Stakeholder Pension Scheme Regulations 2000;

‘terms of business’ means a letter, notice or written agreement between a firm and a private customer which sets out the terms on which the firm will conduct investment business with or on behalf of the private customer.

