

Consultation Paper 61

Financial Services Authority

The regulation of stakeholder pensions

Paragraph 5.2 of Consultation Paper 61 refers to publication on the FSA's website of the full version of chapters 5 and 6 of the existing conduct of business rules, including the changes to take account of stakeholder pensions. This text is attached.

Records

- 3.7.1 R** *A firm must make and retain an adequate record of each financial promotion which it has confirmed as complying with the Financial promotion rules. The record should be retained for a minimum period of:*
- (1)** *6 years in the case of a record relevant to a life policy or pension contract or stakeholder pension scheme;*
 - (2)** *Indefinitely in the case of a record relevant to a pension transfer or opt-out;*
 - (3)** *3 years in any other case.*

COB 3 ANNEX 4G: GUIDANCE ON POTENTIAL PROBLEM AREAS FOR DIRECT OFFER FINANCIAL PROMOTIONS

This annex, the table and the notes, form part of COB 3.9.14 G.

(1)	AVC Schemes (including FSAVCs)	A
(2)	PEP transfers	B
(3)	Bond funds (and other funds using instruments which can pose a significant risk to the capital value of the fund)	C
(4)	'Guaranteed' products	D
(5)	With profit bonds	E
(6)	Pensions – staggered vesting	F
(7)	'High Income' products	G
(8)	'Stock market bonds'	H
(9)	'Hybrid bonds'	I

(10)	Personal Pensions and Stakeholder Pension Schemes	J
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J. PERSONAL PENSIONS AND STAKEHOLDER PENSION SCHEMES

Firms promoting personal pension schemes through direct offer financial promotions are reminded of the provisions of COB 5.3.28 R. Further guidance is given in Table 5.3(1).

RECORD KEEPING REQUIREMENTS

- 4.2.11 R** **A firm must make a record of each *terms of business* it provides or *customer agreement* it enters into, and any amendment made to it, as soon as the *terms of business, customer agreement* or amendment comes into force, and that record must be retained indefinitely in the case of a record relevant to a *pension transfer* or opt out, for a period of at least six years in the case of a record relevant to a *life policy* or *pension contract* or *stakeholder pension scheme*, and for a period of at least three years in any other case. In each case, the minimum time period runs from the date on which the *customer* ceases to be a *customer* of the *firm*.**

5. Chapter 5: Advising/Selling

5.1 Polarisation and Status Disclosure

APPLICATION

- 5.1.1 G This section applies to *firms* which give *advice* to *private customers* about *packaged products*.

PURPOSE

- 5.1.2 G This section gives support to *Principles* 6 and 7 which require *firms* to have due regard to the information needs of their *customers* and treat them fairly. Where *advice* is given about *packaged products* it is important that a *private customer* is always clear about whether a *firm*, its *advisers* or *representatives*, will act solely in his interests or whether the range of *advice* it will offer will be constrained by the nature and number of its commercial relationships. Accordingly, the *rules* and *guidance* in this section give effect to the regulatory *policy* of polarisation which, in relation only to *packaged products*, requires a *firm* either to act independently for the *customer*, or, on a tied basis where *advice* is restricted to the range of products available from one particular *product provider* or from a collection of *product providers* which are allied together as a *marketing group*.
- 5.1.3 G As well as giving effect to the *policy* of polarisation the *rules* and *guidance* in this section require *firms* to ensure their polarised status is disclosed to *customers* in a clear and timely way.

Polarisation

TIED ADVICE ON BEHALF OF PRODUCT PROVIDERS AND MARKETING GROUPS

- 5.1.4 R (1) **A *firm* which is a *product provider* or a *marketing associate* must, subject to paragraph (2) below, ensure that neither it nor any of its *employees* or *representatives* gives *advice* to a *private customer* concerning the sale of a *packaged product* unless the product is issued by the *firm* itself or by another member of the *marketing group* to which the *firm* belongs.**
- (2) **The restriction in paragraph (1) above does not apply to a *firm* when it acts as a discretionary *portfolio manager*.**
- (3) **A *firm* which is a *product provider* or a *marketing associate* must ensure that neither it nor any of its *employees* or *representatives* communicates or approves a *direct offer financial promotion* for a *packaged product* unless the product is issued by itself or by another member of the *marketing group* to which the *firm* belongs.**
- 5.1.5 G The polarisation restriction does not inhibit the sale of a *firm's packaged products* by *firms* which do not belong to the *firm's marketing group* where a sale does not involve the provision of *advice* to a *private customer*. *Packaged products* may be sold by *firms* outside the provider's *marketing group* on an execution-only basis.

- 5.1.6 G The polarisation restriction applies to *advice* given to *private customers* about the components of an *ISA* which comprise *packaged products*.
- 5.1.7 R **A firm which is a *product provider* or a *marketing group associate* must take reasonable steps to ensure that neither it nor any of its *employees, representatives* or *introducers* say or do, or omit to say or do, anything which might lead a *private customer* reasonably to believe that it is in a position to *advise* or procure *advice* on *packaged products* other than those of the *firm* or of other members of the *marketing group* to which the *firm* belongs.**
- 5.1.8 R **A firm which is a *product provider* or a *marketing group associate* must ensure that its *representatives* are able to sell each type of *packaged product* which the *firm* produces.**
- 5.1.9 G *COB* 5.1.8 R does not prevent a *firm* from offering different versions of a product for sale through different sales channels and does not prohibit differential pricing between those channels. *Representatives* should, however, be in a position to sell a least one version of each type of product in the *firm's* product range.
- 5.1.10 R **A firm which is a *product provider* or a *marketing associate* must ensure that its *representatives*:**
- (1) are not likely to be influenced by the structure of their *remuneration* to give unsuitable *advice* to a *private customer*;
 - (2) do not refer *private customers* to an *independent intermediary* in circumstances which would amount to the provision of an indirect benefit which may not be given under *COB* 5.6 R Table 5.6(1)R, item 18.
- 5.1.11 R **A firm which is a *product provider* or *marketing associate* must take reasonable steps to ensure that each of their *appointed representatives* complies with the requirements contained in *COB* 5.1.4-5.1.10 R.**

INDEPENDENT ADVICE

- 5.1.12 G *COB* 5.2.3 R requires an *independent intermediary firm* to ensure that any recommendation of a *designated investment* for a *customer* is suitable. In the case of a recommendation about *packaged products*, an *independent intermediary* must have regard to the products available from the market as a whole. An *independent intermediary* must not recommend a *packaged product* provided by a *firm* with whom it is associated unless such a product is demonstrably the most suitable available in the market place. *COB* 5.1.13 R gives further support to these *rules*.
- 5.1.13 R (1) **A firm which is an *independent intermediary* must, in relation to *advice* given about *packaged products*, act in the best interests of its *customers*.**

- (2) **A firm which is an *independent intermediary* must not enter into commercial arrangements with other *persons* which might be likely to adversely affect its ability to provide *advice* on *packaged products* on an independent basis.**
- (3) **A firm which is an *independent intermediary firm*, must take reasonable steps to ensure that any of its *appointed representative firms* complies with the requirements of paragraphs (1) and (2) above.**

Disclosure of polarisation status

GENERAL

- 5.1.14 **R A firm must ensure that *private customers* are informed on a timely basis as to whether any *advice* which they may give on *packaged products* will be:**
- (1) **independent; or**
 - (2) **restricted to the *packaged products* of one *product provider* or *marketing group*; or**
 - (3) **given for the purposes of managing a *portfolio* with discretion.**

DISCLOSURE ON FIRST CONTACT WITH A PRIVATE CUSTOMER

- 5.1.15 **R When contact is first made with a *private customer*:**
- (1) **a *product provider* or *marketing associate* must ensure that its *introducers* and *representatives* and those of its *appointed representatives*:**
 - (a) **state the name of the *firm* and identify themselves as an *introducer* or *representative* of the *product provider* or of the *marketing group* to which the *firm* belongs; and**
 - (b) **make clear to the *private customer* that the *firm* provides *advice* only on the *packaged products* of the *product provider* or of its *marketing group*;**
 - (2) **an *independent intermediary* must ensure that its *financial advisers* and those of its *appointed representatives* state the name of the *firm* and make it clear that the *firm* provides *independent advice*;**
 - (3) **if the first contact with a *private customer* is carried out by electronic means, a *firm* must ensure that a message specifying the *firm's* polarisation status is prominently displayed at the outset of any presentation or series of screens.**

- 5.1.16 G The message in COB 5.1.15 (3) should be clearly visible and not hidden in some way, for example within other text, by having print size too small to be easily legible or by including it in an area which can be bypassed without giving the *private customer* an opportunity to read it in full.

DISCLOSURE IN FINANCIAL PROMOTIONS

- 5.1.17 R (1) **A firm which is a product provider or marketing associate must ensure that it does not communicate or approve a financial promotion for a packaged product to which COB 3.8.8R applies (a financial promotion which identifies and promotes a specific investment) unless it discloses in the communication that the firm is only able to advise private customers on the packaged products offered by itself or by such other firms as are members of the marketing group to which the firm belongs.**
- (2) **[Paragraph (1) applies also to a financial promotion which refers to a particular mortgage (unless the promotion makes it expressly clear that it relates only to a repayment mortgage)].**
- 5.1.18 G (1) In accordance with the approach adopted for *financial promotions* generally in section 3, promotions which do no more than promote a *firm's* image do not need to disclose its polarised status. But a promotion which, for example, promotes 'the xyz with profits pension' (i.e. a specific *packaged product*) must include a clear and sufficiently prominent statement about the *firm's* status.
- (2) A promotion which simply includes general references such as 'life assurance', 'investments', 'savings' or 'pensions' does not need to include a status disclosure statement.

5.2 Know Your Customer

APPLICATION

- 5.2.1 **R** This section applies to a *firm* which gives investment *advice* to a *private customer* or acts as an *investment manager* for any *customer*.

PURPOSE

- 5.2.2 **G** *Principle 9* requires a *firm* to take reasonable care to ensure the suitability of its investment *advice* and discretionary decisions. To comply with this a *firm* should obtain sufficient information about its *customer* to enable it to meet its responsibility to give *advice* which is suitable. A *firm* acting as an *investment manager* should also ensure that before acting in the exercise of discretion it has sufficient information about its *customer* to enable it to act in a way which is suitable for that *customer*.

REQUIREMENT TO KNOW YOUR CUSTOMER

- 5.2.3 **R** A *firm* which gives investment *advice* to a *private customer* or acts as an *investment manager* for any *customer* must obtain, before giving investment *advice* or exercising discretion, such personal and financial information about that *customer* as may reasonably be considered relevant to the services that the *firm* is to provide.

- 5.2.4 **G** A *firm* which advises a *private customer*, or exercises discretion for any *customer*, on a continuing basis should keep its information about the *customer* under regular review. A *firm* which acts for a *customer* on an occasional basis should undertake such a review at the point of the *customer* most recent instruction.

- 5.2.5 **G** If a *customer* declines to provide personal and financial information, a *firm* should not proceed to provide those services without promptly advising the *customer* and confirming in writing, that the lack of such information is likely adversely to affect the quality of the services which it can provide.

- 5.2.6 **G** The specific form of information obtained and enquiries made in satisfying COB 5.2.3 R will vary depending on the type of *customer* concerned. Table COB 5.2G provides *guidance* on the process of collecting personal and financial information.

RECORD KEEPING

- 5.2.7 **R** A *firm* must make a record of a *customer's* personal and financial circumstances, obtained in satisfying COB 5.2.3R, to be retained indefinitely in the case of a record relating to a *pension transfer* or opt-out, for a minimum period of 6 years in the case of a record relevant to a *life policy*, *pension contract* or *stakeholder pension scheme*, and for a minimum period of 3 years in any other case. In each case, the minimum time period runs from the point at which the information required under COB 5.2.3R is obtained.

Guidance on the collection of a customer's personal and financial information

- 1 COB 5.2.3 R requires a *firm* to obtain sufficient information about a *customer's* personal and financial situation before giving investment *advice* or exercising discretion. The *rules* do not prescribe the method of obtaining this information. This is left for *firms* to decide to enable them to design and use a process suitable to the market place in which they transact business. This process is usually referred to as factfinding. The document for collecting *customer* information is commonly referred to as a 'factfind'.
 - (1) For a factfind to be successful it should:
 - (a) provide an analysis of a *customer's* personal and financial circumstances leading to clear identification of his needs and priorities so that, combined with attitude to risk, a suitable and affordable *designated investment* can be recommended; and
 - (b) demonstrate that the *advice* given or discretion exercised was suitable and affordable at the time it was made; any future review of the *advice* given or discretion exercised will concentrate on the factfind document as the record of the resulting transaction; unless it is recorded, a reviewer will not have access to subsidiary information which may be the key to explaining why the *advice* given or discretion exercised was viewed as suitable;
 - (2) a factfind can be electronic or paper based and a record of it should be readily available and accessible at all times;
 - (3) there is no regulatory requirement to obtain a *customer's* signature on a factfind; when a factfind is to be signed by a *customer* it should include a prominent warning advising him to read the factfind in full before signing.

AFFORDABILITY

- 2 When assessing the affordability of a *designated investment*:
 - (1) every item of expenditure need not be recorded separately but a realistic total of overall expenditure, possibly split between essential and non-essential, should be ascertained;
 - (2) known or likely future changes in the pattern of the *customer's* income and expenditure should be taken into account as well as his current financial situation;
 - (3) although a *customer's* ability to afford a *designated investment* can only be decided on the merits of each case, if the amount concerned was of a size which absorbed all, or a substantial part, of a *customer's* non-essential income, it might reasonably be viewed as 'unaffordable'.

ADVICE SCENARIOS

- 3 The scope of investment *advice* can vary widely depending on the situation. Consequently the degree of factfinding needed will also vary. It is vital to determine at the outset what the *customer* is seeking:
- (1) The overriding need is always to ensure that *customers* who are being *advised*:
 - (a) receive suitable *advice*; and
 - (b) know what to expect either a full financial review or *advice* on a limited area;
 - (2) For example, a *customer* who approaches a *firm* for *advice* in response to a *financial promotion* about a particular maxi *ISA* investing in *unit trusts* may in fact require:
 - (a) *advice* about *ISAs* in general or indeed savings in general; in this scenario a full factfind process would need to be followed but might focus on savings;
 - (b) *advice* about which of the *firm*'s funds is most suitable; this would be the case where the *customer* had already concluded that a maxi *ISA* was the generic type of contract needed; in this scenario factfinding might be restricted to matters such as eligibility for a maxi *ISA*, attitude to risk and need for income or capital growth, so as to enable fund selection.
- 4 When a *firm* is advising on *designated investments* such as group personal pensions which might involve many potential *customers* all at one time, the *Principles* of suitability and affordability do not change. The need to undertake a factfind on every *employee* could be reduced however by issuing an information pack to all *employees* containing:
- (1) a full disclosure *financial promotion* explaining the scheme;
 - (2) details of any employer contribution, mandatory *employee* contribution and the opportunity for voluntary contributions;
 - (3) an indication of the levels of *advice* available to the *employee*, for example from the employer's *adviser* (who might be a *representative* or an *independent intermediary*) and the desirability of seeking entirely *independent advice* (and whether the *employee* would have to bear the cost of this); and
 - (4) a reminder to take account of any existing pension arrangements when deciding what to do.

Those *employees* still requiring *advice* after receiving the pack would then be invited to go through the factfind process a full factfind where a full financial analysis is required or a focused factfind where *advice* is needed only on whether to join the scheme.

EXECUTION-ONLY

- 5 An *execution-only transaction* is a transaction carried out on the instruction of the *customer* where no *advice* has been provided or judgement made concerning the suitability of a course of action or *designated investment*. An *execution-only transaction* does not require a factfind. Cases where limited *advice* is provided cannot be treated as execution-only and factfinding will be required. The degree of factfinding required will depend on the amount and extent of *advice* the *customer* needs. For example:
- (1) if a *customer* has decided on a course of action without any assistance from the *firm* but asks for details of a specific product, or confirmation of a particular feature or its price before investing, the questions can be answered without the need for a factfind; but
 - (2) if a *customer*, on receiving the answers to questions about a product, then wishes to know whether the product or features within it are suitable for his or her circumstances, a degree of factfinding will be needed; this would not be execution-only business.

FRIENDLY SOCIETY LIFE POLICIES

- 6 When recommending a *friendly society life policy*, the *premium* of which does not exceed £50 a year or £1 a week, the *firm* need only :
- (1) obtain details of the *customer's* (and his dependants') net income and expenditure; and
 - (2) keep a record of the reasons why the recommended transaction is considered to be suitable for that individual *customer*.

5.3 Suitability

APPLICATION

- 5.3.1 R This section applies to a *firm* which makes a specific recommendation of a *designated investment* to a *private customer* or acts as a discretionary *investment manager* for any *customer*.
- 5.3.2 R This section does not apply to a *firm* in respect of a *direct offer financial promotion*.
- 5.3.3 G In respect of COB 5.3.2 R *firms* are reminded that a *direct offer financial promotion* must make it clear that should a *customer* be in any doubt about the suitability of the agreement that is the subject of the promotion he should contact the *firm* or and *independent intermediary* if the *firm* does not offer *advice* (see COB 3.9.6 R)

PURPOSE

- 5.3.4 G *Principle 9* requires a *firm* to take reasonable care to ensure the suitability of its investment *advice* and discretionary decisions. This section aims to ensure that a *firm's* investment *advice* and discretionary decisions are based on specific information about the *customer*, both obtained by and known to the *firm* at the time.

REQUIREMENT FOR SUITABILITY

- 5.3.5 R (1) A *firm* must take reasonable steps to ensure that it does not in the course of *designated investment business*:
- (a) make any specific recommendation to a *private customer* of a *designated investment*; or
 - (b) effect a discretionary transaction for any *customer*;
- Unless the recommendation or transaction is suitable for the *customer* having regard to the facts disclosed by him and other relevant facts about the *customer* of which the *firm* is, or reasonably should be, aware.
- (2) A *firm* which acts as:
- (a) an *independent intermediary* or a non-discretionary *investment manager* who has agreed to maintain a *private customer's portfolio* or account under continuous review and provide specific recommendations of *designated investments* from time to time; or
 - (b) a discretionary *investment manager* for any *customer*,

must take reasonable steps to ensure that the *customer's portfolio* or account remains suitable having regard to the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or reasonably should be aware.

- (3) Where, with the agreement of the *customer*, a *firm* has pooled his funds with those of others with a view to taking common management decisions, the *firm* must take reasonable steps to ensure that the transaction is suitable for the fund, having regard to the stated investment objectives of the fund.

5.3.6 R Where a *firm* is a *product provider, marketing associate or marketing group representative* and makes a specific recommendation to a *private customer* to buy a *packaged product*, it must take reasonable steps to ensure that:

- (1) the recommended *packaged product* is the most suitable (taking account of COB 5.3.8 R) of those available from the *marketing group*; and
- (2) such a recommendation is not made if there is no suitable *packaged product* available from within the *marketing group*.

5.3.7 G In satisfying COB 5.3.6R a *product provider, marketing associate or marketing group representative* may refer a *private customer* to an intermediary provided it does so in accordance with COB 2.2 (Inducements and Soft Commission).

5.3.8 R For the purposes of COB 5.3.6 R (1), a *packaged product* will not be more suitable than another only because it is available at a more favourable price through an alternative distribution channel, or on special terms offered by the *product provider* and is not available through all distribution channels of the *firm*.

5.3.9 R An *independent intermediary* must not recommend a *private customer* to buy :

- (1) a *packaged product* if it is aware of a generally available *packaged product* which would better meet the needs and circumstances of the *private customer*; or
- (2) a connected *packaged product* (ie a *packaged product* issued or operated by a *connected person*) if it is aware of a generally available non-connected *packaged product* which could satisfy the needs and circumstances of the *private customer* as well as the connected *packaged product* (but see COB 5.3.10 R).

5.3.10 R COB 5.3.9 R (2) does not apply to an *investment manager* acting as such.

- 5.3.11 G A firm which manages the funds of an *occupational pension scheme* or a *stakeholder pension scheme* should take reasonable steps to ensure the suitability both of specific transactions and of the investment *portfolio* under management with regard to the investment objectives specified in the scheme mandate.
- 5.3.12 G (1) COB 5.3.18 R contains specific *rules* applicable to the suitability of *broker funds*.
- (2) COB 5.3.19-5.3.27 contain specific *rules* applicable to the suitability of *pension transfers* and opt-outs.
- (3) COB 5.3.28 R contains specific rules applicable to the promotion of *personal pension schemes*, including GPPs, via *direct offer financial promotions*.
- (4) Table 5.3(1) G contains *guidance* which is relevant for assessing the suitability of:
- (a) *pension transfers* and opt-outs;
 - (b) FSAVCs compared to scheme AVCs;
 - (c) hybrid products;
 - (d) industrial assurance *policies*;
 - (e) *personal pension fund withdrawals*;
 - (f) *ISA/PEP transfers*;
 - (g) contracting-out of SERPS.
 - (h) personal pensions and FSAVCs compared to *stakeholder pension schemes*

REASON FOR RECOMMENDATION

- 5.3.13 R Where, on the recommendation of the *firm*, a *private customer* either:
- (1) **buys, sells, surrenders, converts, cancels, or suspends premiums or contributions, in relation to a *packaged product which is a life policy or stakeholder pension scheme*;**
 - (2) **elects to make *pension fund withdrawals*; or**
 - (3) **enters into a *pension transfer* or opt-out of an *occupational pension scheme***
- and none of the exceptions in COB 5.3.17 R applies, the *firm* must provide the *customer* with a *suitability letter* within the time stipulated by COB 5.3.16 R.
- 5.3.14 R The *suitability letter* in COB 5.3.13 R must:
- (1) **explain the reasons why the *firm* considers the transaction to be suitable for the *customer* having regard to his personal and financial circumstances;**

- (2) explain all significant consequences and potential disadvantages of the transaction; and
- (3) (a) In the case of a *personal pension scheme* which is not a *stakeholder pension scheme* explain the reasons why the *firm* considers the *personal pension scheme* to be more suitable than a *stakeholder pension scheme*.
- (b) In the case of a *free standing additional voluntary contribution* where the customer has the alternative of a *stakeholder pension scheme* explain the reasons why the *firm* considers the recommended contract to be more suitable than a *stakeholder pension scheme* or an *AVC*.
- (4) be signed by an individual who is nominated for that purpose and who is authorised by the *firm* to *advise* on the type of product that has been recommended.

5.3.15 G Table 5.2(2) G provides *guidance* on the construction and content of *suitability letters*.

5.3.16 R The *firm* must provide the letter required by COB 5.3.13 R to the *customer*:

- (1) in the case of a *packaged product*, where the *Cancellation rules* require notification of the right to cancel, no later than the issue of the post-sale notification of the *customer's* right to cancel;
- (2) in any other case, when or as soon as possible after the transaction is effected.

EXCEPTIONS

5.3.17 R COB 5.3.13 R does not apply:

- (1) if the *customer* is *habitually resident* in another *Member State* at the time of signing the proposal form to which the recommendation relates; or
- (2) if the *customer* is *habitually resident* in a State which is not a *Member State* and the *customer* is not in the *United Kingdom* at the time of signing the form to which the recommendation relates; or
- (3) following a recommendation for a *life policy* sold by a *friendly society* with a *premium* not exceeding £50 a year or, if payable weekly, £1 a week.

[(1) and (2) above are subject to the final decision on territoriality]

SUITABILITY OF BROKER FUNDS

- 5.3.18 R** A *firm* acting as a *broker fund adviser* for a *private customer* must:
- (1)** take account of the characteristics of the *broker fund*, including the charging arrangements, in total, when assessing the suitability of the arrangements;
 - (2)** review on a regular basis the current investment objectives and strategies relative to those at the time of any previous periodic report to the *customer* in accordance with Table COB 8.2(5);
 - (3)** provide the *customer* with an alternative recommendation where the *broker fund* arrangement is no longer suitable; and
 - (4)** Ensure that any significant change in the investment strategy of the fund, where known to the *firm*, is notified to the *customer* in advance together with confirmation of the fund's continued suitability to the *customer's* circumstances or an alternative recommendation.

SUITABILITY OF PENSION TRANSFERS AND OPT-OUTS

- 5.3.19 R If a recommendation about a *pension transfer* or opt-out is to be made on a *firm's* behalf by an individual who is not one of its *pension transfer specialists*, the *firm* must already have established procedures for checking:
- (1) the individual's compliance with the *firm's* procedures;
 - (2) (where applicable) the correctness of the application of the *transfer value analysis* system; and
 - (3) the merits of the proposed transaction and the suitability of the recommendation;
- and any such recommendation must be assessed by one of the *firm's* designated *pension transfer specialists* to ensure the procedures have been followed.
- 5.3.20 R (1) A *firm* must ensure that a *transfer value analysis* is carried out in accordance with COB 6.11.76 – 6.11.82 (*projections*) before it makes any recommendation to a *customer* to transfer out of a *defined benefits occupational pension scheme*.
- (2) A copy of the analysis must be delivered with the *key features* document or otherwise be with the *customer* before he signs the application to transfer.
 - (3) The *firm* must take reasonable steps to ensure the *customer* understands the content and meaning of the analysis, drawing attention to factors which do and do not support the recommendation to transfer.
- 5.3.21 R A *firm* must provide a *projection* of the possible future benefits of the proposed *individual pension contract* before it makes any recommendation to a *customer* to opt out of, or transfer from, an *occupational pension scheme*.
- (1) The format and nature of the benefits given in the *projection* must, so far as is possible, be the same as those which apply under the occupational scheme of which the *customer* is, or is *eligible* to become, a member.
 - (2) Where it is not possible for the benefits shown in the *projection* to replicate those of the *occupational pension scheme*, an explanation must be given.

- (3) If the *customer* has expressed an interest in changing the structure of his eventual benefits, an additional *projection* may also be prepared on that basis.
- 5.3.22 R A *suitability letter* relating to a recommendation to opt out or transfer from an *occupational pension scheme* must include:
- (1) the disadvantages as well as the advantages of opting out or transferring; and
 - (2) in the case of an opt-out, a financial analysis explaining the decision to opt out.
- 5.3.23 R Where an opt-out or transfer from an occupational scheme is arranged for a *customer* on an execution-only basis, the *firm* must make and retain a clear and reliable record to demonstrate that no investment *advice* was supplied to the *customer* and that the *customer* accepts that none was received.
- 5.3.24 R Where, contrary to the *advice* of the *firm*, a *customer* instructs the *firm* to arrange an opt-out or transfer, the *firm* must:
- (1) make and retain a clear and reliable record of the *firm's advice* that the *customer* should not proceed to opt-out or transfer and the *customer's* instructions to proceed with the transaction; and
 - (2) provide a further confirmation and explanation, in writing, to the *customer* that the *firm's advice* is that the *customer* should not proceed to opt out or transfer.
- 5.3.25 G The 'clear and reliable record' required by COB 5.3.23 R and 5.3.24 R will not be achieved by using standard forms merely ticked or signed by the *customer*. Instead, a letter in the *customer's* own handwriting should be obtained wherever possible.
- 5.3.26 R Every six months, a *firm* must notify *the FSA*, in writing, of the number of opt-out and transfer transactions it has handled during the previous six months; and it must also supply, at quarterly intervals, details if, during the preceding quarter:
- (1) The number of execution-only opt-outs or transfers arranged exceeded 1% of all its opt-outs or transfers arranged during the quarter; or
 - (2) The number of opt-outs or transfers arranged against its own *advice* exceeded 1% of all its opt-outs or transfers arranged during the quarter; or
 - (3) The number of opt-outs or transfers arranged on a correspondence-only basis exceeded 1% of all its opt-outs or transfers arranged during the quarter.

- 5.3.27 R A firm must:
- (1) keep separate records by *customer* name of every opt-out and transfer arranged, whether *advised* or not; and
 - (2) retain the records required by this section indefinitely.

5.3.28 R A firm that intends to promote a *personal pension scheme* by means of *direct offer financial promotions* to a group of consumers must establish that the *personal pension scheme* is more suitable than a *stakeholder pension scheme* for the majority of those consumers and ensure that this greater suitability is adequately evidenced.

Table
5.3 (1)G

SUITABILITY GUIDANCE	
PENSION TRANSFERS AND OPT-OUTS	
1.	When <i>advising a customer</i> who is, or is <i>eligible</i> to be, an active member of a <i>defined benefit occupational pension scheme</i> , whether he should opt out or transfer, a <i>firm</i> should: <ol style="list-style-type: none"> (a) start by assuming it will not be suitable; and (b) Only then consider it to be suitable if it can clearly demonstrate on the evidence available at the time that it is in the <i>customer's</i> best interests.
2.	When the <i>firm</i> is recommending a <i>customer</i> to transfer or opt out of an <i>occupational pension scheme</i> , the <i>suitability letter</i> should include: <ol style="list-style-type: none"> (a) a clear explanation why transferring or opting-out is more suitable than remaining in the occupational scheme; (b) a request for the <i>customer</i> to contact the <i>firm</i> immediately should clarification or further information be needed or if the letter does not match the <i>customer's</i> understanding of why the transfer or opt-out has been recommended; (c) a statement to the effect that the <i>firm</i> has relied on information supplied by the <i>customer</i> and the occupational scheme; (d) particularly with opt-outs there should be an arithmetic analysis setting out the financial implications of leaving the scheme;
OPT-OUTS	
3.	When <i>advising</i> on an opt-out from an <i>occupational pension scheme</i> , a <i>firm</i> should: <ol style="list-style-type: none"> (a) identify all the rights and benefits available to the <i>customer</i> under the <i>occupational pension scheme</i> and carefully consider the effect of replacing them with the very different benefits of a personal pension; the following factors should be taken into account relating to the occupational scheme:

- spouse's, dependants' and children's pensions;
- early retirement provision, including retirement in ill-health;
- revaluation rates both in deferment and payment, and whether they are guaranteed or discretionary (and if discretionary, whether likely to continue);

- ancillary benefits (eg tax-free cash or lump-sum death benefits);
 - transfer club arrangements where applicable;
 - the *customer's* contribution/the employer's contribution;
 - benefits on leaving service;
 - whether or not eligibility for other benefits, such as *permanent health insurance*, is dependent on being a member of the occupational scheme;
 - the financial *security* of the occupational scheme, by reference (for example) to the last actuarial statement issued under the Disclosure of Information Regulations or the most recent trustees' report and accounts;
- (b) take into account the following additional factors:
- whether or not the employer would contribute to the personal pension;
 - the charging structure of the personal pension and its impact on transfer values in the early years;
 - subjective factors relating to the *customer's* personal circumstances such as:
 - future career plans and earning prospects (including any reasonable likelihood of career progression making better occupational terms available) and intended retirement date;
 - attitude towards earnings-related compared with *money-purchase benefits*;
 - attitude to financial risk and *security*;
 - a possible wish to make pension arrangements separate from employment (eg because the *customer* is on a short-term non-renewable employment contract or does not expect to stay in his current employment for more than a short period);
 - any value the *customer* attaches to personal control;
 - the *customer's* cash needs;
- (c) where the *customer* is about to change, or has just changed, employment, consider the issues in (2) and (3) in relation to any scheme of the new employer for which the *customer* is *eligible* now, or will become *eligible* in the near future;
- (d) where the *customer* is an active or prospective member of a *money-purchase occupational scheme*, follow (1) to (3), to the extent that the factors listed are relevant to such *schemes* taking particular account of differences in costs and *charges*.

TRANSFERS

- 4 a) *Advising a customer on the suitability of transferring deferred benefits from a defined benefit occupational pension scheme* requires detailed consideration of the ceding scheme compared to the *individual pension contract* to which the transfer would take place. A process will be needed which should include procedures:
- for gathering ceding scheme information as detailed in (b);
 - to assess the *customer's* attitude to risk and *security*, this is relevant not merely to the choice of contract or fund, but also (and more fundamentally) to the initial choice between an *occupational pension scheme* and an *individual pension contract*;
 - to ascertain the *customer's* career aspirations and desired retirement age and to consider what a realistic retirement age would be, having regard to the size of the transfer value and the extent to which it can be converted into a stream of income before state pension age;
 - to ascertain whether the *customer's* new employer (if any) has arrangements to accept transferred benefits as if so a further analysis may be necessary;
 - enabling the *adviser* to look at other pension *options*, if available;
 - for carrying out a *transfer value analysis*;
 - for enabling the *customer* to receive sufficient, clear information to make an informed investment decision (see (3)).
- b) The following information as a minimum will be needed from the ceding scheme in respect of the *customer*:
- spouse's, dependants' and children's pensions;
 - early retirement provision, including retirement in ill-health;
 - transfer value quotation detailing:
 - guarantee period;
 - pre and post April 1988 Guaranteed Minimum Pension/Excesses;
 - revaluation rates in deferment and payment and whether they are guaranteed or discretionary and if discretionary whether they are likely to continue and how far they are reflected in the transfer value;
 - tax-free cash arrangements;

- lump-sum death benefits;
 - transfer club arrangements, if applicable;
 - relevant earnings;
 - period of service;
 - scheme details (eg benefits, bridging pensions, guarantee periods, position pre/post normal retirement date, history of discretionary increases);
 - whether members' benefits have been equalised for service from 17 May 1990;
 - ill-health benefits;
 - a consideration of the scheme's financial position and whether the transfer value has been reduced because the scheme is underfunded.
- c) Relevant items of information about the *customer* include:
- the different risks of personal pensions and *defined benefit pension schemes*;
 - the impact of fluctuations in annuity rates on the size of the eventual pension;
 - the impact of protected rights on the planned retirement date;
 - any changes to the tax-free lump-sum;
 - any reduction in immediate death benefits;
 - the *transfer value analysis* including an indication of the rate of growth needed to ensure the investor is no worse off as a result of any transfer;
 - the position and interests of the *customer's* spouse and dependants.
- d) (a) - (c) also apply to prospective *money-purchase benefits* transfers where appropriate; and additional information concerning the *customer* should be considered, including:
- the possibility of incurring early transfer penalties and new front-end *charges*;
 - how the transfer affects the investment risk;
 - how the effects of *charges* and expenses differ between the schemes;
 - changes to the tax-free cash;
 - any reduction in immediate death benefits.

FSAVC/AVC

1. A particular feature of *the FSAVC* market is that a potential investor in an FSAVC will always have the option of the in-house AVC alternative, so this option should always be taken into account in assessing suitability.
2. Both *independent intermediaries* and *representatives* can be expected to undertake a comparison between an FSAVC and the in-house AVC alternative. The factors which may be relevant in making this comparison include:
 - (a) the differences in charges and expense deductions
 - (b) the benefits available under the in-house AVC scheme, for example, employer's matched contributions, or contributions to an in-house scheme which might attract added years' service (which may be of particular benefit in a *defined benefits* scheme);
 - (c) the degree of portability on changing jobs or becoming self-employed;
 - (d) fund choice
 - (e) tax treatment of contributions

Hybrid Products

1. A 'hybrid product' is a product which results from combining a package of products to create one recommended solution. An example is a 'back to back' contract which takes a lump sum investment and splits it into two amounts; one part is used to provide income through the purchase of a temporary annuity and the other part is invested in a *unit trust* or life insurance bond so that by the end of the annuity term the growth may produce the return of the original lump sum invested.
2. The *Principles* of suitability and best investment *advice* apply to all elements of a hybrid product:
 - (a) *independent intermediaries* need to scrutinise ready-made packages from a single *product provider* to make sure that each element is competitive and that a better solution is not available by combining elements from different providers;
 - (b) simplicity or administrative convenience is not sufficient reason for using one provider for all elements.

Industrial Assurance Policies

Whenever an industrial assurance *policy* is recommended to a *customer* and a comparable *policy* (which is not an industrial assurance *policy*) is available which is at least as suitable, the *suitability letter* should explain clearly the reasons why the industrial assurance *policy* is being recommended.

Personal Pension fund withdrawals

When a *firm* is *advising a customer* about personal *pension fund withdrawals*:

- (a) the *customer's* personal and financial circumstances should be considered carefully in particular:
 - the *customer's* investment objectives, need for tax-free cash and state of health;
 - current and future income requirements, existing pension assets and the relative importance of the plan, given the *customer's* financial circumstances;
 - the *customer's* attitude to risk, ensuring that any discrepancy between his attitude to risk relating to *pension fund withdrawals* and that in relation to other investments is clearly explained;
- b) the *suitability letter* should explain:
 - the purpose of the contract for the *customer*;
 - the relative importance of the contract, given the *customer's* financial circumstances;
 - the *customer's* attitude to risk; and
 - the risk factors involved in entering into a *pension fund withdrawal* , which are;
 - taking withdrawals may erode the capital value of the fund, especially if investment returns are poor and a high level of income is taken; this could result in a lower income when the annuity is eventually purchased;
 - the investment returns may be less than those shown in the *illustrations*;
 - annuity rates may be at a worse level when annuity purchase takes place;
 - When maximum withdrawals are to be taken, high *income withdrawals* may not be sustainable during the deferral period.

PEP transfers

When a *firm* is *advising a customer* on whether to transfer existing *PEP* holdings, the standard *Principles* of know your *customer* and suitability apply and all the advantages and disadvantages of transferring should be considered. In particular the following information (which is not exhaustive) should be considered and provided to the *customer* usually as part of the *suitability letter* before the transfer takes place.

- (a) *exit charges* and any other costs associated with the transfer;
- (b) initial start-up *charges*;

- (c) transaction details (ie are holdings liquidated or transferred intact, as permitted by the terms and conditions);
- (d) possibility (and likely effects) of shortfall, following cancellation;
- (e) potential for loss of income or growth, following a rise in markets, while the *PEP transfer* remains pending.

Contracting out of SERPS

When a *firm* is *advising a customer* on whether to contract out of SERPS in favour of an *appropriate personal pension* or contracted out *money-purchase* scheme ('COMP'):

- (a) *advisers* should have a clear understanding of:
 - the range of pivotal ages outside which it will generally be in the best interests of *customers* to remain in SERPS;
 - the level of earnings below which it may not be in a new *customer's* interests to contract out;
 - the minimum length of time for which a *customer* may benefit from being contracted out;
- (b) factors to be taken into account include:
 - *customer's* age and sex;
 - state pension age for females (where different from males);
 - *customer's* level and stability of earnings and tax position;
 - *customer's* career prospects (including the likely period for remaining contracted-out);
 - *customer's* existing pension provision or opportunity to participate in an *occupational pension scheme*;
 - potential loss of rights compared to SERPS benefits;
 - terms of the personal pension or contracted out *money-purchase* scheme with particular reference to the level of *charges*;
 - *customer's* attitude to risk.
- (c) The *suitability letter* should clearly explain any risks in contracting out.

Personal Pensions and FSAVCs compared to Stakeholder Pension Schemes

- (1) A particular feature of the *personal pension scheme* market is that a potential investor in a *personal pension scheme* will always have the option of a *stakeholder pension scheme* and may find that equally suitable for his or her needs.
- (2) Both *independent intermediaries* and *representatives* will need to undertake the comparison between *personal pensions schemes* and *stakeholder pension schemes* and as required by COB [5.3.14(3)]R explain in the *suitability letter* why, if they have recommended a *personal pension scheme*, it is considered more suitable.
- (3) There are some circumstances where a potential investor in an *FSAVC* will have the option of a *stakeholder pension scheme*, in addition to the option of an in-house *AVC*.
- (4) Both *independent intermediaries* and *representatives* will need to undertake a comparison between the three options and explain in the *suitability letter* why, if they have recommended an *FSAVC*, it is considered more suitable than both a *stakeholder pension scheme* and the in-house *AVC*.
- (5) Where a *representative* without access to a *stakeholder pension scheme* makes a comparison with a *stakeholder pension scheme*, the comparison may be with a *stakeholder pension scheme* on the minimum product standards unless the *representative* is or ought to be aware that the *customer* has access to a *stakeholder pension scheme* on more advantageous terms.
- (6) This guidance applies equally to recommendations for individual and group personal pensions, even though the latter may, in accordance with Regulation 22 of the Stakeholder Pension Scheme Regulations 2000, exempt an employer from having to designate a *stakeholder pension scheme* for his employees.
- (7) *Firms* are reminded that *key features* documents for *personal pension schemes* should signpost the availability of *stakeholder pension schemes*, as set out in COB 6.5.12 (5) G.
- (8) *Firms* promoting a *personal pension scheme* (including a GPP) to the employees of a particular employer through *direct offer financial promotions* are reminded of the provisions of COB 5.3.28 R. Accordingly, *firms* should satisfy themselves that the *personal pension scheme* is more suitable than a *stakeholder pension scheme* for the majority of employees to whom the *personal pension scheme* is being promoted, and that this is adequately evidenced. Similar considerations should apply to promotions issued to comparable groups of consumers, such as groups of self-employed people.

Table
5.3(2)G

Guidance on constructing Suitability letters

COB 5.3.13 R requires a written explanation of a recommendation relating to a product to be provided to a *customer*. This is commonly referred to as 'the *suitability letter*' although it does not necessarily need to take the form of a letter, for example it might form part of:

- (a) a financial report to the *customer* (provided that it is prominent); or
 - (b) a factfind document (a copy of the whole factfind or just the recommendation section could be given to the *customer*; if a copy of the factfind or the recommendation section is sent, the copy should be of sufficient quality to be clearly legible.).
2. A *suitability letter*, to be successful, should explain simply and clearly why the recommendation is viewed as suitable having regard to the *customer's*:
- (a) personal and financial circumstances;
 - (b) needs and priorities identified through the factfinding process;
 - (c) attitude to risk in the area of need to which the recommendation relates.

WHEN IS A SUITABILITY LETTER NEEDED

3. COB 5.3.14 R sets out the occasions when a *suitability letter* is required; accordingly the *rule* does not apply in the case of:
1. a recommendation to increase a regular *premium* to an existing contract (a recommendation to commence regular *premiums* in addition to an existing single *premium* contract does require a letter);
 2. a recommendation to make further purchases under an existing fund within a *scheme*;
 3. a recommendation to invest additional single *premiums* in an existing single *premium life policy*;

but a letter is needed in all cases in which *pension transfers* or opt-outs are recommended and it is good practice in general to issue *suitability letters* whenever *advice* is provided.

STYLE AND PRESENTATION

4. The style and presentation of a *suitability letter* is left for *firms* to decide so that they can design a document which works best for the market in which they transact business. Factors which will benefit the *suitability letter* are;
 - (a) personalisation - the more personalised the *suitability letter*, the more effective it is likely to be;
 - (b) simplicity and plain English - when technical terms need to be incorporated, they should be explained if the *customer* is unlikely to understand their meaning;
 - (c) brevity and conciseness using clear messages - lengthy explanations in extensive letters are likely to reduce the effectiveness of the letter with *customers* disinclined to read it properly.
5. Ideally each *suitability letter* will be different, reflecting the approach of the *adviser*, the *customer's* profile, subjects discussed and the considerations on which the *advice* was based. Some *firms* may wish to introduce a degree of standardisation to *suitability letter* production to aid quality *control*. When using a standardised approach the *firm* should take the following into account:
 - (a) standard paragraphs are best limited to the description of the most common needs and the products which will satisfy those needs;
 - (b) the *firm* should clearly link the *customer's* own needs, priorities and attitude to risk to the product recommended rather than just setting out stock motives that may apply to all *customers*;
 - (c) tick box, pre-printed forms should rarely be used, and when they are it should only be in the simplest and most straightforward *advice* situations.
6. Where a *product provider* supplies a computer-based system for the production of *suitability letters* to an *independent intermediary*, it should:
 - (a) cover all product types and providers and not steer the intermediary towards the provider that supplied the system;
 - (b) Make clear that responsibility for *suitability letter* production rests with the *independent intermediary*;
 - (c) Ensure the supply of the system does not infringe the *rules* on inducements.

CONTENT

7. A *firm* should take the following into account when constructing a *suitability letter*:
 - (a) the letter should explain why the *customer's* needs, priorities, attitude to risk and financial situation all combine to make the recommended product suitable and affordable for the *customer*; it should not merely act as a 'reason what' letter by explaining only what product is being recommended with no link to the *customers* personal circumstances;
 - (b) other needs discussed during the factfind process which the *customer* does not wish to consider do not need to be included in the *suitability letter* (although they should be recorded in the factfind); they should be included if they assist in demonstrating why the product recommended is believed suitable;
 - (c) alternative products which were recommended but rejected by the *customer* should be mentioned;
 - (d) only *options*, available under a contract, which have been recommended, whether accepted or rejected, need be mentioned in the letter;
 - (e) *independent intermediaries* should include (the list is not exhaustive) why a particular *product provider* has been recommended; reasons may include product features not available elsewhere, price, service levels, performance track record, investment prospects, medical evidence terms, reputation and financial strength.

SIGNING

8. Each *suitability letter* should be signed by someone nominated by the *firm* to *advise* on the type of product which is being recommended. Ideally this will be the *adviser* who gave the particular *advice* but if not both the signatory and the *adviser* should accept responsibility for the letter and the recommendation.

TIMING OF ISSUE

9. *Suitability letters* should be issued to *customers* at the time that the recommendation is made or as soon as possible afterwards, to allow as much time as possible for the *customer* to consider the recommendation before any cancellation period ends. In any event the letter should be issued no later than the issue of the cancellation notice or, in situations where no cancellation notice will be issued, for example in the case of personal pension *income withdrawals*, before the transaction is put into effect.

5.4 Customers Understanding of Risk

APPLICATION

5.4.1 R This section applies to a *firm* which:

- (1) makes a specific investment recommendation to a *private customer*;
- (2) acts as a discretionary *investment manager* for a *customer*;
- (3) arranges or *executes a deal* with or for a *private customer*; or
- (4) engages in a *stock lending activity* with or for a *private customer*.

PURPOSE

5.4.2 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* requires a *firm* to pay due regard to the information needs of its *customers* and *communicate* information in a way that is fair and not misleading. *Principle 9* requires a *firm* to take reasonable care to ensure the suitability of its *advice* and discretionary decisions. This section supports these requirements by requiring *firms* to take reasonable steps to ensure that *private customers* understand the nature of the particular risks inherent in certain transactions.

5.4.3 CUSTOMERS' UNDERSTANDING

R Where any of the services listed in column 1 of *COB* Table 5.4(1), are provided to or for a *private customer* in respect of the *designated investments* listed in column 2 a *firm* must take reasonable steps to enable the *customer* to understand the nature of the risks involved.

COBS Table 5.4(1)

1 Services	2 Investments
Making a specific investment recommendation, or acting as discretionary manager	Any <i>designated investment</i>
Arranging or <i>executing</i> transactions	<i>Warrants, derivatives or penny shares</i>
<i>Stock lending activity</i>	Any <i>designated investment</i>

MINIMUM REQUIREMENTS

- 5.4.4 G To conform to COB 5.4.3 R a *firm* should, as a minimum, provide its *customer* with relevant information specified in COB 5.4.6 R to COB 5.3.14 R.
- 5.4.5 G A *firm* may comply with an obligation to provide its *customer* with a particular risk warning by including it in a *customer agreement* or providing it separately. Where the *firm* provides it separately, it should make clear the services or investments to which the risk warnings relate.

TRANSACTIONS IN A CONTINGENT LIABILITY INVESTMENT

- 5.4.6 R **Before providing a *private customer* any service listed in column 1 of COB Table 5.4(1), in respect of a *contingent liability investment*, the *firm* must take reasonable steps to ensure that the *customer* is fully aware:**
- (1) of the circumstances in which the *customer* may be required to provide any margin;
 - (2) of the form in which the margin may be provided;
 - (3) of the steps the *firm* may be entitled to take if the *customer* fails to provide margin which may be required;
 - (4) that the *customer* 's failure to provide margin might lead to the *firm* closing out the *customer*'s position; the circumstances in which the *firm* will have the right to do this and that the *firm* will, in any event if margin is not provided, be required to *close out* the position after a period of five *business days*; and
 - (5) of the circumstances, other than *failure* to provide margin, which may lead to the *firm* closing out the *customer*'s position without prior reference to him.

WARRANTS OR DERIVATIVES

- 5.4.7 R **Before providing to a *private customer* any service listed in column 1 of COB Table 5.4(1), in respect of a *warrant* or a *derivative*, a *firm* must:**
- (1) provide its *customer* with the *warrants* and *derivatives* risk warning at COB 5.4 Annex 1R;
 - (2) ask its *customer* to sign and return a copy of the *warrants* and *derivatives* risk warning; and
 - (3) give its *customer* a reasonable opportunity to read and consider the risk warning.

5.4.8 R The *warrants* and *derivatives* risk warning need not be sent in relation to the realisation of a *warrant* that is already held by the *customer*, or of a *warrant* attached to another *security*.

5.4.9 R A *firm* need not seek to obtain a signed copy of the *warrants* and *derivatives* risk warning:

(1) from an indirect *customer*, where the *firm* has sent the risk warning to the *customer's* agent and has received confirmation from the agent that the indirect *customer* has signed a copy of the risk warning; or

(2) from a *private customer* who is ordinarily resident outside the *United Kingdom*, if the *firm* can demonstrate that the *private customer* did not wish to receive it or to sign it.

INVESTMENTS WHICH ARE NOT READILY REALISABLE

5.4.10 R Before making a specific recommendation to a *private customer* to buy a *designated investment* which is not a readily realisable investment, the *firm* must:

(1) Warn the *customer* that there is a restricted market for such investments, and that it may therefore be difficult to *deal* in any such investment or to obtain reliable information about its value; and

(2) Disclose any known position which the *firm* or any of its *associates* holds in the investment or in a related investment.

PENNY SHARES

5.4.11 R Before providing to a *private customer* any service listed in column 1 of COB Table 5.4(1), in relation to *penny shares*, a *firm* must provide the risk warnings required by COB 3.9.15 R (*financial promotion*).

SECURITIES WHICH MAY BE SUBJECT TO STABILISATION

5.4.12 R A *firm* must not, in the exercise of discretion, arrange or *execute* a *deal* with or for a *private customer*, or make a specific recommendation to a *private customer* to *deal*, in *securities* which may be subject to stabilisation unless:

(1) the *firm* is satisfied on reasonable grounds that at the time of the relevant *deal* or recommendation, those investments were not the subject of stabilisation and had not recently been the subject of stabilisation; or

(2) the *firm* takes adequate steps to enable the *customer* to understand the nature of the risks involved.

(3) For the purposes of (2) “adequate steps” means, unless the *firm* has reasonable grounds for believing that an oral explanation is sufficient, that:

(a) the *firm* has sent, or knows that another *firm* has, sent to the *customer* before the relevant *deal* or recommendation, a notice substantially in the form set out in COB 5 Annex 2E; and

(b) before or at the same time it makes a recommendation, the *firm* warns the *customer* that the recommendation relates to *securities* which may be subject to stabilisation, and reminds him of the notice referred to at (b).

5.4.13 G The notice referred to in COB 5.4.12 (3)(a) R may be included in the *customer agreement*.

STOCK LENDING ACTIVITY

5.4.14 R **Before a *firm* undertakes a *stock lending activity* with or for a *private customer*, it must notify him:**

(1) that this may affect his taxation position and that he should consult his tax *adviser* before proceeding; and

(2) of the consequences to him of the *stock lending activity*, including how it may impact on his rights as holder of the investments.

COB 5 ANNEX 1 R – WARRANTS AND DERIVATIVES RISK WARNING NOTICE

This notice is provided to you, as a private customer, in compliance with the rules of the Financial Services Authority (FSA). Private customers are afforded greater protection under these rules than other customers are and you should ensure that your firm tells you what these are. This notice cannot disclose all the risks and other significant aspects of warrants* and/or derivative* products such as futures*, options*, and contracts for differences* (* delete as appropriate). You should not deal in derivatives unless you understand the nature of the contract you are entering into and the extent of your exposure to risk. You should also be satisfied that the contract is suitable for you in the light of your circumstances and financial position. Certain strategies, such as a 'spread' position or a 'straddle', may be as risky as a simple 'long' or 'short' position.

Whilst derivative instruments can be utilised for the management of investment risk, some investments are unsuitable for many investors. Different instruments involve different levels of exposure to risk and in deciding whether to trade in such instruments you should be aware of the following points. (Include or delete as appropriate)

1. Warrants

A warrant is a right to subscribe for shares, debentures, loan stock or government securities and is exercisable against the original issuer of the securities. Warrants often involve a high degree of gearing, so that a relatively small movement in the price of the underlying security results in a disproportionately large movement, unfavourable or favourable, in the price of the warrant. The prices of warrants can therefore be volatile.

You should not buy a warrant unless you are prepared to sustain a total loss of the money you have invested plus any commission or other transaction charges.

Some other instruments are also called warrants but are actually options (for example, a right to acquire securities which is exercisable against someone other than the original issuer of the securities, often called a 'covered warrant').

2. Off-exchange warrant transactions

Transactions in off-exchange warrants may involve greater risk than dealing in exchange traded warrants because there is no exchange market through which to liquidate your position, to assess the value of the warrant or the exposure to risk. Bid and offer prices need not be quoted, and even where they are, they will be established by dealers in these instruments and consequently it may be difficult to establish what is a fair price.

Your firm must make it clear to you if you are entering into an off-exchange transaction and advise you of any risks involved.

3. Futures

Transactions in futures involve the obligation to make, or to take, delivery of the underlying asset of the contract at a future date, or in some cases to settle the position with cash. They carry a high degree of risk. The 'gearing' or 'leverage' often obtainable in futures trading means that a small deposit or down payment can lead to large losses as well as gains. It also means that a relatively small movement can lead to a proportionately much larger movement in the value of your investment, and this can work against you as well as for you. Futures transactions have a contingent liability, and you should be aware of the implications of this, in particular the margining requirements, which are set out in paragraph (8) below.

4. Options

There are many different types of options with different characteristics subject to the following conditions.

Buying options:

Buying options involves less risk than selling options because, if the price of the underlying asset moves against you, you can simply allow the option to lapse. The maximum loss is limited to the premium, plus any commission or other transaction charges. However, if you buy a call option on a futures contract and you later exercise the option, you will acquire the future. This will expose you to the risks described under 'futures' and 'contingent liability transactions'.

Writing options

If you write an option, the risk involved is considerably greater than buying options. You may be liable for margin to maintain your position and a loss may be sustained well in excess of the premium received. By writing an option, you accept a legal obligation to purchase or sell the underlying asset if the option is exercised against you, however far the market price has moved away from the exercise price. If you already own the underlying asset which you have contracted to sell (known as 'covered call options') the risk is reduced. If you do not own the underlying asset (known as 'uncovered call options') the risk can be unlimited. Only experienced persons should contemplate writing uncovered options, and then only after securing full details of the applicable conditions and potential risk exposure.

Traditional options:

Certain London Stock Exchange firms under special exchange rules write a particular type of option called a 'traditional option'. These may involve greater risk than other options. Two way prices are not usually quoted and there is no exchange market on which to close out an open position or to effect an equal and opposite transaction to reverse an open position. It may be difficult to assess its value or for the seller of such an option to manage his exposure to risk.

Certain options markets operate on a margined basis, under which buyers do not pay the full premium on their option at the time they purchase it. In this situation you may subsequently be called upon to pay margin on the option up to the level of your premium. If you fail to do so as required, your position may be closed or liquidated in the same way as a futures position.

5. Contracts for differences

Futures and options contracts can also be referred to as a contract for differences. These can be options and futures on the FTSE 100 index or any other index, as well as currency and interest rate swaps. However, unlike other futures and options, these contracts can only be settled in cash. Investing in a contract for differences carries the same risks as investing in a future or an option and you should be aware of these as set out in paragraphs (3) and (4) respectively. Transactions in contracts for differences may also have a contingent liability and you should be aware of the implications of this as set out in paragraph (X) below.

6. Off exchange transactions

It may not always be apparent whether or not a particular derivative is effected on exchange or in an off exchange derivative transaction. Your firm must make it clear to you if you are entering into an off exchange derivative transaction.

While some off-exchange markets are highly liquid, transactions in off-exchange or 'non transferable' derivatives may involve greater risk than investing in on-exchange derivatives because there is no exchange market on which to close out an open position. It may be impossible to liquidate an existing position, to assess the value of the position arising from an off-exchange transaction or to assess the exposure to risk. Bid and offer prices need not be quoted, and, even where they are, they will be established by dealers in these instruments and consequently it may be difficult to establish what is a fair price.

7. Foreign markets

Foreign markets will involve different risks from the UK markets. In some cases the risks will be greater. On request, your firm must provide an explanation of the relevant risks and protections (if any) which will operate in any foreign markets, including the extent to which he will accept liability for any default of a foreign firm through whom he deals. The potential for profit or loss from transactions on foreign markets or in foreign denominated contracts will be affected by fluctuations in foreign exchange rates.

8. Contingent liability transactions

Contingent liability transactions, which are margined, require you to make a series of payments against the purchase price, instead of paying the whole purchase price immediately.

If you trade in futures, contracts for differences or sell options you may sustain a total loss of the margin you deposit with your firm to establish or maintain a position. If the market moves against you, you may be called upon to pay substantial additional margin at short notice to maintain the position. If you fail to do so within the time required, your position may be liquidated at a loss and you will be responsible for the resulting deficit.

Even if a transaction is not margined, it may still carry an obligation to make further payments in certain circumstances over and above any amount paid when you entered the contract.

Save as specifically provided by the FSA, your firm may only carry out margined or contingent liability transactions with, or for you, if they are traded on or under the rules of a recognised or designated investment exchange. Contingent liability transactions which are not so traded may expose you to substantially greater risks.

9. Limited liability transactions

Before entering into a limited liability transaction, you should obtain from your firm or the with whom you are dealing a formal written statement confirming that the extent of your loss liability on each transaction will be limited to an amount agreed by you prior to entering into the transaction.

The amount you can lose in limited liability transactions will be less than in other margined transactions, which have no predetermined loss limit. Nevertheless, even though the extent of loss will be subject to the agreed limit, you may sustain the loss in a relatively short time. Your loss may be limited, but the risk of sustaining a total loss to the amount agreed is substantial.

10. Collateral

If you deposit collateral as security with your firm, the way in which it will be treated will vary according to the type of transaction and where it is traded. There could be significant differences in the treatment of your collateral depending on whether you are trading on a recognised or designated investment exchange, with the rules of that exchange (and the associated clearing house) applying, or trading off exchange. Deposited collateral may lose its identity as your property once dealings on your behalf are undertaken. Even if your dealings should ultimately prove profitable, you may not get back the same assets, which you deposited and may have to accept payment in cash. You should ascertain from your firm how your collateral will be dealt with.

11. Commissions

Before you begin to trade, you should obtain details of all commissions and other charges for which you will be liable. If any charges are not expressed in money terms (but, for example, as a percentage of contract value), you should obtain a clear and written explanation, including appropriate examples, to establish what such charges

are likely to mean in specific money terms. In the case of futures, when commission is charged as a percentage, it will normally be as a percentage of the total contract value, and not simply as a percentage of your initial payment.

12. Suspensions of trading

Under certain trading conditions it may be difficult or impossible to liquidate a position. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that under the rules of the relevant exchange trading is suspended or restricted. Placing a stop-loss order will not necessarily limit your losses to the intended amounts, because market conditions may make it impossible to execute such an order at the stipulated price.

13. Clearing house protections

On many exchanges, the performance of a transaction by your firm (or third party with whom he is dealing on your behalf) is 'guaranteed' by the exchange or clearing house. However, this guarantee is unlikely in most circumstances to cover you, the customer, and may not protect you if your firm or another party defaults on its obligations to you. On request, your firm must explain and any protection provided to you under the clearing guarantee applicable to any on-exchange derivatives in which you are dealing. There is no clearing house for traditional options, nor normally for off-exchange instruments which are not traded under the rules of a recognised or designated investment exchange.

14. Insolvency

Your firm's insolvency or default, or that of any other brokers involved with your transaction, may lead to positions being liquidated or closed out without your consent. In certain circumstances, you may not get back the Actual assets which you lodged as collateral and you may have to accept any available payments in cash. On request, your firm must provide an explanation of the extent to which he will accept liability for any insolvency of, or default by, other firms involved with your transactions.

[name of firm]

[on duplicate for signature by private customer]

I/We have read and understood the risk warning set out above.

Date

[Signature of the customer]

[Signature of joint account holder]

Note to firms

Paragraphs 1-10 may be deleted when they relate to particular kinds of business which will not be carried out with or for the customer.

Paragraphs 11-14 are mandatory and may not be deleted.

This notice may be incorporated as part of a two-way customer agreement, except that the customer must sign separately that he has read and understood the risk warnings.

COB 5 ANNEX 2E DEALING IN SECURITIES WHICH MAY BE SUBJECT TO STABILISATION

This statement complies with the rules of the Financial Services Authority (FSA). The FSA regulates financial services and protects consumers.

[Name of Firm] or its representatives may, from time to time, recommend transactions in securities to you, or carry out such transactions on your behalf, where the price may have been influenced by measures taken to stabilise it.

You should read the explanation below carefully. This is designed to help you judge whether you wish your funds to be invested at all in such securities and, if you do, whether you wish:

- to be consulted before [Name of Firm] carries out any such transaction on your behalf; or
- to authorise [Name of Firm] to carry out any such transaction on your behalf without first having to consult you.

What is stabilisation?

Stabilisation enables the market price of a security to be pegged (fixed) during the period when a new issue of securities is sold to the public. Stabilisation may affect not only the price of the new issue but also the price of other securities related to it.

The FSA allows stabilisation in order to help counter the fact that, when a new issue comes on to the market for the first time, the price can sometimes drop for a time before buyers are found.

Stabilisation is carried out by a 'stabilising manager' (normally the firm chiefly responsible for bringing a new issue to market). As long as the stabilising manager follows a strict set of rules, he is entitled to buy back securities that were previously sold to investors or allotted to institutions who have decided not to keep them. The effect of this may be to keep the price at a higher level than it would otherwise be during the period of stabilisation.

The Stabilisation Rules:

- limit the period when a stabilising manager may stabilise a new issue;
- fix the price at which he may stabilise (in the case of shares and warrants but not bonds); and
- require him to disclose that he may be stabilising but not that he is actually doing so.

The fact that a new issue or a related security is being stabilised should not be taken as any indication of the level of interest from investors, nor of the price at which they are prepared to buy the securities.

5.5 Information about the Firm

APPLICATION

- 5.5.1 R This section applies to any *communication* between a *firm*, or its agent and its *private customers* in relation to the *firm's designated investment business* and other business which is overseas business conducted with or for a *private customer* who is in the *United Kingdom* or with overseas *private customers*.
- 5.5.2 R This section does not apply to *financial promotions communicated or approved by firms*.

PURPOSE

- 5.5.3 G *Principle 7: (Communications with customers)* requires a *firm* to pay due regard to the information needs of its *customers*, and *communicate* information to them in a way that is fair and not misleading. This section aims to ensure that *firms* provide *private customers* with sufficient information about the *firm* on a timely basis.
- 5.5.4 R **COB 5.5.5 R does not apply where specified information has been given to a *customer* on a previous occasion and that information is still up to date.**

REQUIREMENT FOR FAIR AND CLEAR COMMUNICATION

- 5.5.5 R A *firm* must give promptly to each of its *private customers* adequate information about the *firm*, and any relevant agent, which is relevant to the *designated investment business* being carried on with, or for, that *customer* at the time, including:
- (1) the identity and business address of the *firm* and any relevant agent;
 - (2) the name and status, or relationship with the *firm* of *employees* and other agents with whom the *customer* may have contact; and
 - (3) Confirmation that the *firm*, and any relevant agent, is regulated or authorised by *the FSA*.
- 5.5.6 E (1) A *firm* should provide the information contained in Table 5.5(1)E.
- (2) Compliance with (1) may be relied on as tending to establish compliance with COB 5.5.5 R.
 - (3) Contravention of (1) may be relied on as tending to establish contravention of COB 5.5.5 R.

OVERSEAS BUSINESS FOR UK PRIVATE CUSTOMERS

- 5.5.7 R (1) A firm must not carry on regulated or ancillary activities**
- (a) which is not designated investment business**
 - (b) with or for a private customer who is in the United Kingdom**
- unless it has made the disclosure to the customer set out in COB 5.5.9 R.**
- (2) A firm must not give an introduction or advice, or make arrangements, with a view to another person carrying on such business with or for such a customer, unless it has both made the disclosure in COB 5.5.9 R and has no reason to doubt that the customer will be dealt with in an honest and reliable way.**

BUSINESS CONDUCTED FROM AN OVERSEAS PLACE OF BUSINESS WITH OVERSEAS CUSTOMERS

- 5.5.8 R (1) If, in any oral or written communication made with a private customer outside the United Kingdom in connection with regulated or ancillary activities which is not designated investment business, a firm indicates that it is an authorised person, it must also, and with equal prominence, make the disclosure in COB 5.5.9 R.**
- (2) In respect of any oral or written communication, a firm need not include the prescribed disclosure in (1) where it has already made the disclosure in writing to the private customer to whom the communication is made.**
- 5.5.9 R The required disclosure means a written statement which must make clear that in some or all respects, the regulatory regime applying, including any compensation arrangements, will be different from that of the United Kingdom, and which may also indicate the protections or compensation available under another system of regulation.**

Table
5.5(1)E

WRITTEN COMMUNICATIONS

1. Any written *communication*, stationery, or other business documentation, including business cards, published by a *firm* or used by its *employees* or its agents, should include:
 - (1) the name, business address and telephone number of the *firm* and that of the *marketing group*, if any, to which the *firm* belongs, or of the *branch* or office of the *firm* from which the *communication* originates;
 - (2) the name and status or relationship with the *firm*, of the individual from whom the *communication* originates;
 - (3) a statement that the *firm* is regulated by the Financial Services Authority for investment business or that the *firm* is an *authorised person*;
 - (4) In the case of a *firm* which is a *product provider*, or a *marketing associate*:
 - (a) a statement that the individual using the *communication* is the *representative* of, or represents only, the *firm* or the *marketing group* to which it belongs; and
 - (b) a brief description of the *packaged products* and services provided by the *firm* or by members of its *marketing group*.
2. An individual who is an *introducer* should make this capacity clear.
3. When a *representative* first meets a *customer*, he should give the *customer* the following particulars in writing, which may be in the form of a business card, either before progressing beyond the social preliminaries or as soon as reasonably practicable after a telephone conversation has ended, unless such a statement has been given previously to the *customer* and is still up to date:
 - (1) the name, address and telephone number of the *company representative* or *appointed representative*;
 - (2) the name, business address and telephone number of the *firm's branch* or office to which the *company representative* reports and that of the *marketing group*, if any, to which the *firm* belongs;

(3) a statement that the *firm* is regulated by the Financial Services Authority for investment business or that the *firm* is an *authorised person*; and

where relevant a statement that the *appointed representative* or *marketing associate* represents only the specified *firm* or *marketing group* together with a brief description of the *packaged products* and services provided by that *firm*, indicating which of those he is appointed to sell.

5.6 [Reasonable charges]

5.7 Disclosure of Charges, Remuneration and Commission

APPLICATION

5.7.1 R This section applies to a *firm* which:

- (1) makes *charges* to a *private customer* in connection with the conduct of *designated investment business* or a transaction in a cash *deposit ISA*; or
- (2) in relation to a transaction in a *packaged product* or a cash *deposit ISA* with or for a *private customer*.
 - (a) pays *remuneration* to its *employees* or agents; or
 - (b) Receives *remuneration* or *commission* from a *provider firm* or an *overseas person*.

PURPOSE

5.7.2 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. The purpose of this section is to ensure that a *private customer* is made aware of the costs to him, directly or indirectly, of financial services, so that he is better able to make informed choices.

DISCLOSURE OF CHARGES AND OTHER INCOME

5.7.3 R Before a *firm*:

- (1) conducts *designated investment business*; or
- (2) effects or arranges a transaction in a cash *deposit ISA*,

with or for a *private customer*, the *firm* must disclose to him the basis or amount of its *charges* for conducting that business and the nature or amount of any other income receivable by it (or, to its knowledge, by its *associate*) and attributable to that business (but for this purpose 'income' does not include *remuneration* or *commission* which must be disclosed under COB 5.7.5 R).

- 5.7.4 G A *firm* may make the disclosures required by COB 5.7.3 R in its *terms of business*, in a *customer agreement*, or in a separate written statement. Disclosure should include any product-related *charges* which are deducted from the *customer's* investment. Where the product is a *packaged product* or a cash *deposit ISA*, product-related *charges* and expenses will be disclosed in the *key features* document or minimum information which the *firm* is required to give to the *customer* under COB 6.2 and 6.4. Where a *firm* is a *broker fund adviser*, disclosure should include any *fees* payable to the *firm* or its *associate* in connection with that activity by a *provider firm* or its *marketing group associate*.

DISCLOSURE OF REMUNERATION AND COMMISSION

- 5.7.5 R **Before effecting or arranging a transaction in a *packaged product* or a cash *deposit ISA* with or for a *private customer*, a *firm* must disclose to him the amount or value, in cash terms, of:**
- (1) **any *remuneration* payable by it or its *associates* to its *employees* or *agents*; or**
- (2) **any *remuneration* or *commission* receivable by it,**
- in connection with the transaction.**
- 5.7.6 G The disclosures required by COB 5.7.5 R should be made in a manner which is fair, clear and not misleading, as required by COB 2.1.2 R, and which indicates the timing of payments. For example, where a *firm* exchanges its right to future *commission* payments for a lump sum, whether by way of a loan or other commercial arrangement, it should disclose the amount of *commission* receivable by it which has been exchanged for the lump sum.
- 5.7.7 G The disclosures required by COB 5.7.5 R should normally be made in writing. For example, where a *customer-specific key features* document or *projection* is provided to a *private customer*, the required disclosures should either be contained in the *projection* or the *key features* document, or be given to the *customer* in a separate written statement at the time these documents are given to him. However, where a *private customer* does not make a written application to enter into a transaction contemplated by COB 5.7.5 R (for example, when the transaction is a telephone *deal* for *units* in a regulated collective *scheme*), the *firm* may disclose the amount or value of *remuneration* or *commission* orally. In these circumstances, the *firm* should give written confirmation as soon as possible after the date of the transaction, and in any event within seven *business days*. In preparing its written disclosure statement, a *firm* may wish to follow the *guidance* on content and wording set out in Annex 5.7(1)G.
- 5.7.8 G The collection of *premiums* payable under a *life policy* by *introducers* acting as the appointed collecting agents of a *firm* which is a *product provider* will not be treated by the *FSA* as a transaction for the purposes of COB 5.7.5 R.
- 5.7.9 R **If the terms of a *packaged product* are varied in circumstances which require the issue of a cancellation notice, a *firm* must disclose to a *private customer* any consequent increase in *remuneration* or *commission* receivable by it in relation to that transaction.**
- 5.7.10 R **In determining the amount to be disclosed as *remuneration* in accordance with COB 5.7.5 R(1), a *firm* must put a proper value on the cash payments, benefits and services which it provides to its *employees* and *agents* in connection with the transaction.**

- 5.7.11 E (1) In general, when determining the value of cash payments, benefits and services under *COB 5.7.10 R*, a *firm* should follow the provisions of Table 5.7(2)E.
- (2) Compliance with *COB 5.7.10 (1)E* may be relied on as tending to establish compliance with *COB 5.7.10 R*.

EXCEPTIONS TO THE REMUNERATION AND COMMISSION DISCLOSURE REQUIREMENTS OF *COB 5.7.5 R*

- 5.7.12 R The disclosure requirements of *COB 5.7.5 R* do not apply where:
- (1) the *firm* effects or arranges the transaction when acting as a *discretionary investment manager*;
 - (2) the transaction is effected or arranged for a *private customer* who is a *habitually resident* overseas and, where the *packaged product* is a *life policy*, is not present in the *United Kingdom* at the time the application form is signed;
- 5.7.13 R The requirement in *COB 5.7.5 (1)* to disclose to a *private customer* the amount or value, in cash terms, of *remuneration* or *commission* does not apply where the *firm* provides the *customer* with example *key features*, under *COB 6.2.7 R* and *6.2.22 R*, provided that the *firm* discloses the actual amount or value of *remuneration* or *commission* within five *business days* of effecting or arranging the transaction.

DISCLOSURE ON REQUEST

- 5.7.14 R Where a *private customer* asks for information about:
- (1) a *firm's charges* for conducting *designated investment business* with or for him; or
 - (2) the *remuneration* or *commission* payable or receivable by the *firm* in connection with a transaction in a *packaged product* or a *cash deposit ISA*,
- the *firm* must provide this information to the *customer* in writing within five *business days*.

TABLE 5.7(1) G

REMUNERATION AND COMMISSION DISCLOSURE STATEMENTS: CONTENT AND WORDING	
A <i>firm</i> may wish to follow the <i>guidance</i> on content and wording in this Annex when drawing up its written statement of <i>remuneration</i> or <i>commission</i> under with COB 5.7.7 G.	
DEGREE OF ACCURACY	
1.	In <i>order</i> to assist the <i>customer's</i> comprehension, the <i>firm</i> may round large amounts of <i>commission</i> or <i>remuneration</i> to three significant figures (that is, where the leading three figures are sufficient to convey the magnitude of the result, for example £122 instead of £122.35).
SAMPLE WORDINGS	
2.	Examples of appropriate <i>remuneration</i> or <i>commission</i> disclosure wordings, for:
(a)	Intermediaries and <i>Independent intermediaries</i> (in a <i>direct offer financial promotion</i> or post-sale information): "For arranging this <i>policy/contract</i> XYZ Ltd will pay <i>commission</i> to IFA Ltd £....."
(b)	<i>Representatives</i> employed by an <i>appointed representative</i> : "For arranging this <i>policy/contract</i> XYZ Ltd will pay <i>remuneration</i> and provide services to AR Ltd worth £....."
(c)	<i>Representatives</i> employed by an <i>appointed representative</i> (at the point of sale or in a <i>direct offer financial promotion</i>): "For arranging this <i>policy/contract</i> AR Ltd expects to receive <i>remuneration</i> and services from XYZ Ltd worth £"
(d)	<i>Representatives</i> employed directly by the <i>firm</i> (including self-employed <i>sole trader appointed representatives</i>):
(i)	"For arranging this <i>policy/contract</i> I expect to receive <i>remuneration</i> and services from XYZ Ltd worth £.....";
(ii)	An acceptable post sale alternative might be: "For arranging this <i>policy</i> XYZ Ltd has provided <i>remuneration</i> and services to your <i>adviser</i> worth £.....";
This type of approach would be suitable either to a salaried or commissioned <i>representative</i> .	
3.	The description of the monetary amount (just shown as '£.....') in the above examples will vary according to the incidence and basis of <i>remuneration</i> or <i>commission</i> . Examples of some common cases are:
(a)	Indemnified payments (on a monthly payment contract): "£X immediately and Yp each month from the Nth month to the end of the term"

	(b)	<p>Level basis (on an annual payment whole life contract):</p> <p>"£X each year".</p> <p>But in the case of a sale by any <i>representative</i>, the provision of benefits and services would probably require instead a statement in the form:</p> <p>"£X immediately and £Y each year thereafter".</p>
	(c)	<p>Fund related basis:</p> <p>Using the same rate of growth and the same periods as those in the <i>key features</i> document, the example will normally show the <i>commission</i> or <i>remuneration</i> in the first year in which it is paid and the tenth year.</p>
	(d)	<p>Increasing payment basis:</p> <p>"£X immediately and a variable amount in each year thereafter, being, for example, £Y in the second year and increasing to £Z by the final year".</p>

TABLE 5.7(2)E: CALCULATING REMUNERATION

<p>This table applies only to a <i>firm</i> which is a <i>provider firm</i>. It sets out the basis on which the <i>firm</i> should determine the value of cash payments, benefits and services to be disclosed as <i>remuneration</i> under COB 5.7.5 R (1). Benefits and services need only be included where their value is such that they could not be provided to an <i>independent intermediary</i> as an indirect benefit under COB 2.2.3G and 2.2.5G, as set out below.</p>	
<p>PART I: CASH PAYMENTS</p>	
1.	<p>These cover all payments by a <i>firm</i> to a <i>representative</i> in relation to a transaction in a <i>packaged product</i>, including:</p>
(a)	<p>payments to any <i>employee</i> or <i>representative</i> of the <i>firm</i> in respect of the transaction (eg. a manager's override), including any payments from the <i>firm</i> to <i>introducers</i>;</p>
(b)	<p>bonus payments made for the achievement of certain sales targets;</p>
(c)	<p>that element of any payment made in relation to other business which may be considered to result directly or indirectly from the transaction; for example, any extra element of <i>remuneration</i> payable on the sale of a mortgage which is to be repaid through an investment in a <i>packaged product</i>;</p>
(d)	<p>payments resulting directly from business written in previous years (eg. renewal <i>remuneration</i>), which are conditional on the completion of minimum amounts of new business;</p>
(e)	<p>payments made by a <i>connected person</i> of the <i>firm</i> to a <i>connected person</i> of the <i>representative</i>;</p>
(f)	<p>salaries and other payments which do not relate directly to any one transaction, provided they are treated similarly to 'benefits' and 'services' (see paragraph 11).</p>
2.	<p>In determining the amounts to be included in the calculation, a <i>firm</i> should have regard to the following:</p>
(a)	<p>Where the precise rate of <i>remuneration</i> is not known in advance (for example, if retrospective volume overrides apply), the <i>firm</i> should estimate the rate likely to apply to the <i>representative</i> in question. This could, for example, be based on an average rate applicable to particular groupings of <i>representatives</i> or on a best estimate for each <i>representative</i>. It should never be below any minimum rate applicable to that <i>representative</i> or sale.</p>

	(b)	Where payments are credited to an 'account' from which periodic withdrawals may be made, the amount included should be that credited to the account whether or not the recipient intends to withdraw it immediately. If a <i>representative</i> is able to 'overdraw' an account, all amounts to be credited in respect of a transaction, up to any 'borrowing limit', should be included as if they were credited at the time the transaction was effected.
	(c)	Where a payment is made before the <i>firm</i> receives the <i>premium</i> or the investment monies to which it relates (eg indemnity <i>remuneration</i>), it should be included as being received at the time of payment. If the <i>adviser</i> or the provider wishes to explain this arrangement to the <i>customer</i> he is free to do so, provided this does not detract from the required disclosure.
	(d)	Where the <i>firm</i> arranges for a lump sum to be paid to a <i>representative</i> through a third party, in <i>exchange</i> for the income stream to which the <i>representative</i> is entitled (eg a factoring arrangement), the lump sum should be included as if it were a payment from the <i>firm</i> .
	(e)	Where a <i>firm</i> provides, or arranges for a third party to provide, a loan to a <i>representative</i> , on the <i>security</i> of, or in the expectation of, future payments from the <i>firm</i> , the amounts to be included are the payments to the <i>representative</i> on which the provision of the loan is based, as if they were received at the time the transaction was effected, irrespective of their actual incidence.
	(f)	Where an agent is employed and remunerated by the <i>firm's appointed representative</i> , the payments to be included should be those made by the <i>firm</i> to the <i>appointed representative</i> , not those made by the <i>appointed representative</i> to its own <i>employee</i> .
PART II: BENEFITS		
3.		These include the cost to the <i>firm</i> of all non-monetary benefits provided by it to a <i>representative</i> . These benefits include any item that could be considered as a benefit or expense under the Income and Corporation Taxes Act 1988 (ICTA). A benefit should be included regardless of whether the <i>representative</i> is liable to income tax on it and whether it is chargeable to tax.
4.		The type of benefits covered by 3 include the use of a car, attendance at conferences, subsidised loans, contributions to <i>pension schemes</i> , national insurance contributions, the value of any voucher outside the ICTA definition of benefit or expense, and the value of <i>share options</i> (taking into account any discount on issue and assuming that the <i>shares</i> in question grow at a reasonable rate in line with other investments).

	PART III: SERVICES	
5.	These include those benefits which could not be provided to an intermediary as an indirect benefit (under COB 2.2.3 R and 2.2.5G), and which the intermediary would therefore have to fund out of its disclosable <i>commission</i> . It is not necessary for a <i>firm</i> actually to provide services to an intermediary for it to be able to apply this criterion in relation to its <i>employees</i> or agents.	
6.	The following services should be included:	
	(a)	office accommodation and equipment, including telephone, photocopying and fax;
	(b)	loans where a commercial rate of interest is not charged, including <i>remuneration</i> advances overdue for repayment;
	(c)	general stationery and mailing/distribution costs;
	(d)	computer hardware and software (except software which specifically relates to the <i>firm's packaged products</i> [investment contracts], such as software used in supporting the pensions review process or for producing <i>illustrations, projections</i> and product information);
	(e)	clerical and administrative support (except support given in relation to the pensions review process);
	(f)	business insurance cover, including professional indemnity and fidelity guarantee;
	(g)	recruitment;
	(h)	compliance monitoring;
	(i)	<i>customer services</i> ;
	(j)	business planning services;
	(k)	line management;
7.	To put a value on these services, the following costs should be included:	
	(a)	all overheads attributable to a particular cost item (for example, the cost of a compliance official);
	(b)	salary costs prorata where individuals are only engaged part-time on relevant business;
	(c)	rent and associated premises costs at an appropriately reduced rate where the premises are also used for other business activities;

	(d)	only that proportion of the cost of lead generation promotions attributable to the generation of relevant business (but including the placing of any <i>financial promotion</i> , and its mailing or provision of access to third party <i>customers</i>);
	(e)	only the marginal additional compliance costs of ensuring that <i>representatives</i> and their support and training material comply with relevant <i>FSA rules</i> ;
	(f)	the commercial value of a service which is the use of an asset owned by the <i>firm</i> (eg in the case of a property, its full market rent);
	(g)	in respect of <i>appointed representatives</i> , the costs of any promotion in a newspaper or elsewhere and the provision of <i>representative</i> specific literature in connection with a <i>direct offer financial promotion</i> ;
	(h)	in respect of <i>marketing associates</i> and connected <i>appointed representatives</i> , where the name of the <i>company</i> is included in the <i>direct offer financial promotion</i> , the costs of any promotion in a newspaper or elsewhere and the provision of <i>representative</i> specific literature in connection with a <i>direct offer financial promotion</i> .
8.		The following costs should be excluded:
	(a)	any contributions made by a <i>representative</i> out of his own resources;
	(b)	the cost of corporate awareness advertising;
	(c)	training costs;
	(d)	underwriting, <i>policy</i> administration and claims handling costs;
	(e)	costs of developing and maintaining computer systems for the provision of <i>projections</i> of benefits, <i>customer</i> specific <i>key features</i> documents or other product information;
	(f)	costs of compensating <i>customers</i> ;
	(g)	the costs of head office and <i>branch</i> level management and support, other than payments to managers falling under Part I above, for <i>representatives</i> where these services could also be provided to an <i>independent intermediary</i> eg broker <i>branches</i> and 'inspectors';
	(h)	'collecting <i>remuneration</i> ' payable in respect of <i>industrial assurance business</i> or by <i>friendly societies</i> , provided that the amounts excluded do not exceed the genuine costs of <i>premium</i> collection; comparison with the <i>remuneration</i> payable to collectors who are not <i>representatives</i> or with the renewal <i>remuneration</i> payable on ordinary <i>branch</i> business may provide a guide.

	PART IV: CALCULATION METHODOLOGY	
	ACTUARIAL ADVICE	
9.	A <i>firm</i> which is a <i>UK life office</i> or <i>friendly society</i> should take the <i>advice</i> of its appointed actuary in determining the costs of benefits and services to be included and their apportionment over individual <i>packaged product</i> transactions. Where the <i>firm</i> does not follow its actuary's <i>advice</i> , it should notify <i>the FSA</i> , giving the reasons for that decision and the alternative assumptions it plans to use.	
	REMUNERATION SCALE	
10.	Where an identical <i>remuneration</i> scale applies to all <i>representatives</i> (although they might earn differing percentages of it) the same average amount of <i>remuneration</i> (and the value of other benefits and services) in respect of identical transactions may be disclosed regardless of the percentage of the scale paid to each individual <i>representative</i> . Averaging may be used for <i>representatives</i> on the same scale and <i>employees of marketing associates</i> , but not <i>appointed representatives</i> .	
	SALARY AND OTHER NON-VOLUME OR SALES RELATED PAYMENTS	
11.	Where a <i>representative</i> receives a salary, or other non-volume or non-sales related payments:	
	(a)	these should be amalgamated with the cost of benefits and services and;
	(b)	the total costs should be apportioned over individual transactions in a way which reflects the value of the contract to the <i>firm</i> or to the <i>firm's marketing group</i> .
	PAYMENTS TO ASSOCIATES	
12.	Where a <i>firm</i> pays <i>remuneration</i> to a <i>marketing associate</i> , or an <i>appointed representative</i> which is a <i>connected person</i> of the <i>firm</i> , it should ensure that the calculation of the sum to be disclosed is the higher of:	
	(a)	all payments, benefits and services provided to its <i>representatives</i> , from whatever source, plus an additional allowance for profit of 15 per cent – unless the <i>firm</i> can demonstrate that another figure (higher or lower) is more appropriate; or
	(b)	the <i>remuneration</i> actually paid by the <i>firm</i> , plus the value of services provided.

5.8 Customers introduced to clearing firms by overseas introducing brokers

APPLICATION

- 5.8.1 G This section applies to *firms* which in the course of carrying on *designated investment business* act as *clearing firms* to which *overseas introducing brokers* introduce transactions on behalf of their *customers*.

PURPOSE

- 5.8.2 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly, and therefore *clearing firms* should make appropriate disclosures to *customers*.

CLEARING FIRMS AND OVERSEAS INTRODUCING BROKERS

- 5.8.3 G A *clearing firm* to whom an *overseas introducing broker* has introduced a transaction on behalf of its customer should ensure that the *customer* understands the nature of the services that the *clearing firm* will be providing to that *customer* and that the services provided by the *clearing firm*, not those of the *overseas introducing broker*, will be regulated under *the Act*.
- 5.8.4 G Where a *clearing firm* becomes aware of the activities of an *overseas introducing broker* that it knows or reasonably suspects may be damaging to that *clearing firm's customers*, it is reminded of the requirement under *Principle 1* to conduct its business with integrity.

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

6.1 Packaged product and ISA disclosure

APPLICATION

6.1.1 R This Section and Sections 6.2 to 6.5 apply to *firms*:

- (1) which sell, recommend or arrange for the sale of *packaged products to private customers*, to the trustees of *occupational pension schemes* or to the trustees or managers of *stakeholder pension schemes*; or
- (2) which sell, recommend or arrange for the sale of cash *deposit ISAs to private customers*.

6.1.2 G COB 6.2.21 R and COB 6.2.24 R modify COB 6.1.1 R for inwardly and outwardly passporting *firms*. COB 6.4.2 R and 6.4.20 R set out how the *rules* apply where *packaged products* are sold to the trustees of certain *occupational pension schemes* or to the trustees or managers of *stakeholder pension schemes*.

PURPOSE

6.1.3 G These sections 6.1- 6.5 amplify *Principle 7*, which requires a *firm* to pay due regard to the information needs of its *private customers*. In the case of *packaged products* there is a special need to ensure that *private customers* are supplied with such information as 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 need in relation to cash *deposit ISAs*.

REQUIREMENT TO PRODUCE KEY FEATURES

- 6.1.4 R (1) A *product provider*, *stakeholder pension scheme manager* or *deposit taking firm* must produce *key features* which, as to design and content, comply with the requirements of this section and of section 6.2, for each *packaged product* or cash *deposit ISA* that it offers for sale.
- (2) A *firm* must produce *key features* in printed hard copy format but may in addition produce such *key features* in an electronic format.

QUALITY OF KEY FEATURES

6.1.5 R A *firm* must ensure that any *key features* it produces, whether in printed hard copy or in electronic format:

- (1) is produced and presented to at least the same quality and standard as the associated sales or marketing material being used by the *firm* to promote the *packaged product* or cash *deposit ISA* in question to *customers*; and**
- (2) is included as part of another item of sales or marketing material only if the *key features* are presented and appear with due prominence.**

- 6.1.6 G Where *key features* are produced in hard copy printed format, *firms* should, in complying with COB 6.1.5 R, have particular regard to the quality of paper, type size and the use of colour printing. Where an electronic format is used, regard should be paid to the design and appearance of the *key features* screens, as compared to other screens being used to promote the product. If *key features* are included within another item the need for due prominence is unlikely to be satisfied if they are hidden away at the end or are produced in such small type that their impact on the reader is likely to be materially less than other parts of the document or series of screens.

6.2 Provision of key features

- 6.2.1 G *Firms* are reminded that there are special requirements outlined in section 6.4 for *occupational pension schemes*, *SIPPs*, *income withdrawals*, *ISA cash deposit components*, *second-hand life policies* and *stakeholder pension schemes*.

GENERAL

- 6.2.2 R The ***key features*** required under this section and section 6.4 must be provided in printed hard copy unless a ***private customer*** has approached the ***firm*** by electronic means such as e-mail or facsimile, or by responding to an advertisement delivered through the Internet, when ***key features*** may be provided by the same electronic means.
- 6.2.3 G Electronic methods of providing *key features* should be used only where the *customer* expects to *communicate* in this way. However, this does not prevent *firms* from publicising their products and services using electronic means. It is important that *customers* should not have access to an application form without first having the opportunity to view the full text of the *key features*. There is no need to follow up the electronic delivery of *key features* with printed hard copies.
- 6.2.4 G *Firms* are reminded that any *key features* or other information required by sections 6.4 - 6.5 is a form of *financial promotion* and therefore subject to the *rules* contained in section 3, such as the requirement to keep records of *financial promotions* issued to *customers* for certain periods of time. This period is six years for *life policies*, all *personal pension schemes* and *stakeholder pension schemes*; three for other *schemes*; and indefinitely for *pension transfer* or opt-out business.
- 6.2.5 R **An independent intermediary need not produce *key features* if, in conformity with the rules in sections 6.2 and 6.4, it provides to private customers appropriate *key features* produced by the product provider deposit taker or stakeholder pension scheme manager responsible for issuing the packaged product or cash deposit ISA.**

LIFE POLICIES

- 6.2.6 G COB 6.2.7 – 6.2.18 R are disapplied on territoriality grounds if COB 6.2.21 R applies.
- 6.2.7 R **A firm which makes a personal recommendation to a private customer in respect of any life policy or which arranges for the sale of a life policy to a private customer must, subject to COB 6.2.9 (2) R, provide the private customer with appropriate key features before the private customer completes an application for the policy.**
- 6.2.8 G Where a *private customer* has responded to a *direct offer financial promotion*, the mailing package or advertisement will 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.
- 6.2.9 R (1) **COB 6.2.7 R does not apply to a product provider firm where its life policy is sold by, or arranged to be sold by, an independent intermediary.**

(2) COB 6.2.7 R 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 recommendation was made or of the date on which the policy was arranged.

- 6.2.10 G In most cases, *life policies* will be sold through written applications or proposal forms. COB 6.2.9 (2) R allows for situations such as new personal pensions 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 An adequate oral explanation of the information required by COB 6.2.9 R could 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 Where *key features* have already been provided by a *firm* to a *private customer* 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) the amount of the *premium* is changed;
 - (2) the amount of any *commission* or *remuneration* payable is reduced;
 - (3) a rider benefit is added, removed or amended.
- 6.2.13 G COB 6.2.12 R is intended to allow simple changes to be made before a *private customer* commits himself without further *packaged product* disclosure information being provided. Changes in the amount of *premium* alone, of whatever size, will not require revised *key features* if the underlying purpose of the proposed contract is unchanged. So, for example, an increase in the proposed regular *premium* for a *personal pension policy* will not require revised *key features*; nor would a change in *premium* and sum assured under a mortgage *policy* if the loan has to be increased before the house sale is finalised. However, changes to the type of *packaged product* or the underlying purpose would require revised *key features* – examples being a change from regular to single *premiums* under a *personal pension policy* or a change from maximum life cover to balanced or standard protection under a flexible whole-life *policy*, with or without a change in *premium*. Revised *key features* would be required where the rate or basis of *commission* or *remuneration* was increased, but not where the amount increased simply because of a change in *premium*.

- 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** is provided with written details of the change as soon as practicable and offered revised **key features**.
- 6.2.15 G What constitutes a 'material change' is difficult to define and requires consideration of the facts in the circumstances of each case. As a rule of thumb, 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 Where 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 6.7.5 R, a document containing at least the information required by COB 6.5.7 – 6.5.10 R, 6.5.14 – 6.5.16 R, 6.5.17 – 6.5.18 R and 6.5.26 R must be provided to the policyholder by the **firm** recommending, arranging or effecting the variation before it is put into effect.
- 6.2.17 G **Key features** were introduced for new **policies** sold from 1 January 1995. **Firms** can meet the requirements of COB 6.2.16 R 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 6.5.7–6.5.10 R (An Example), 6.5.14–6.5.16R (Tables), 6.5.17–6.5.18 R (Deductions Summary) and 6.5.26 R (*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 Where a policyholder applies to vary a **policy** issued before 1 January 1995 (or is recommended to do so) and the variation of the **policy** gives rise to a right to cancel under COB 6.7.5 R, information must be given to the policyholder by the **firm** that is recommending, arranging or effecting the variation before it is put into effect which the **firm** believes on reasonable grounds is sufficient to enable him to understand the consequences of the variation.
- 6.2.19 R (1) COB 6.2.16 and 6.2.18 R do not apply to a **product provider firm** in circumstances where the variation to its **life policy** is sold by, or arranged to be sold by an **independent intermediary firm**.

- (2) **COB 6.2.16 and 6.2.18 R do not apply to a *firm* in circumstances 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 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 recommendation was made or of the date on which the *policy* was arranged.**

- 6.2.20 G The *guidance* in COB 6.2.10 and 6.2.11 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

- 6.2.21 R There is no requirement to provide *key features* for a new *life policy* or a variation to an existing *policy* if, at the time that he signs the application, the policyholder is *habitually resident*
- (1) in a *Member State* other than the *United Kingdom*; or
- (2) in a state which is not a *Member State*, and the *private customer* is not present in the *United Kingdom*.

SCHEMES

- 6.2.22 R A *firm* which recommends a *private customer* to buy, or which arranges or effects the issue of a *scheme holding*, must, unless COB 6.2.24 R applies, provide the *private customer* with *key features* for the *scheme holding* before he completes an application for the holding.
- 6.2.23 G (1) COB 6.2.22 R 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 advertisement 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.

EXCEPTIONS TO THE REQUIREMENT TO SEND OR PROVIDE KEY FEATURES FOR SCHEMES

- 6.2.24 R There is no requirement to provide *key features* for *schemes* if:
- (1) a *United Kingdom investment firm* is carrying on passported *ISD* business in another *EEA Member State*;
- (2) a *scheme holding* is purchased by a *private customer* on an execution-only basis;
- (3) the *scheme holding* is purchased by an *intermediate customer* or on behalf of a *private customer* by an *investment manager* exercising discretion;

- (4) the issue or sale of a *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;
 - (5) a subsequent purchase of a *scheme holding* in a fund is made in which the *private customer* already has a *scheme holding*.
 - (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;
 - (6) a *private customer* is transferring from accumulation to income *units* of the same *scheme* (or vice versa) and has already been supplied with *key features* for that *scheme*.
- 6.2.25 R **COB 6.2.22 R does not apply to a *product provider firm* in circumstances where a *scheme holding* is sold by, or arranged to be sold by an *independent intermediary firm*.**
- 6.2.26 R **The provision of *key features* may be delayed where a *scheme holding* is recommended to a *private customer at a distance*, provided that the main points of the *packaged product scheme holding* and recommendation are explained orally to the *private customer* and that the *key features* are sent to him within five *business days* of the recommendation being made.**
- 6.2.27 G An adequate oral explanation of the information required by COB 6.2.26 R could include the following:
- (1) The name of the *scheme*;
 - (2) The *scheme's* aims, the amount(s) to be invested and the risk factors;
 - (3) the *charges* that the *customer* will or may bear and their effect on his investment;
 - (4) a summary of the reasons for any recommendation;
 - (5) where it is the case, that *commission* or *remuneration* will be paid to the *adviser* or *representative*; and
 - (6) that *key features* will be sent within five *business days*.

6.3 Post-sale confirmation – life policies

- 6.3.1 G The requirement to issue post-sale confirmation applies only to *life policies* which are *packaged products*. There is no requirement under this section to issue post-sale confirmation in respect of *schemes* or *pure protection contracts* or *stakeholder pension schemes*.
- 6.3.2 R **Where a *private customer* buys a *life policy* which is a *packaged product* or varies such an existing *life policy* and the variation gives rise to cancellation rights under COB 6.7.5 R the *life office* must send to, or in the case of an industrial assurance *policy* may give, the *private customer* the information required in COB 6.5.33 R, unless COB 6.3.5R applies.**
- 6.3.3 G Post-sale confirmation can be provided in printed hard copy and sent through the post direct to the *private customer*. For industrial assurance *policies*, the post-sale confirmation may be delivered by the *firm's representative* rather than sent by post. Where a *private customer* has approached the *firm* or has submitted his application by electronic means (such as e-mail or through the Internet), the post-sale confirmation may be provided by the same means. But electronic methods should only be used where the *private customer* expects to *communicate* in this way.
- 6.3.4 R **The post-sale confirmation required by COB 6.3.2 R must be sent or given to the *private customer* no later than the issue of any cancellation notice or, if no such notice is required, before the investment transaction becomes irrevocable.**

EXCEPTIONS TO POST-SALE CONFIRMATION

- 6.3.5 R There is no requirement to send or give post-sale confirmation:
- (1) where the *life office* believes on reasonable grounds that the *life policy* or variation has been purchased or effected on behalf of a *private customer* by an *investment manager* exercising discretion;
 - (2) where the *life policy* has been purchased by the trustees of an *occupational pension scheme*;
 - (3) where the *life policy* has been purchased by the trustees or manager of a *stakeholder pension scheme*.
 - (4) where a *life policy* issued before 1 January 1995 is being varied;
 - (5) where, at the time he signed the application for the new *life policy* or variation, the *private customer* was *habitually resident*:
 - (a) in a *Member State* other than the *United Kingdom*, or
 - (b) elsewhere than a *Member State*, and the *private customer* was not present in the *United Kingdom*.

6.4 Key features – special situations

OCCUPATIONAL PENSION SCHEMES

- 6.4.1 G Sections 6.1 and 6.2 apply to the purchase of *packaged products*, whether *life policies* or *schemes*, by the trustees of *money-purchase occupational pension schemes*. There is no requirement to provide *key features* for *packaged products* sold to trustees of *defined benefit occupational pension schemes*.
- 6.4.2 R (1) **A firm recommending, arranging or effecting the purchase of a new group or master *life policy*, the first in a series of individual *life policies* or the first purchase of *units* in a particular *scheme* to or for the trustees of a *money purchase occupational pension scheme* must provide them with *key features*, in accordance with COB 6.2.7 and 6.2.22R.**
- (2) **For the purposes of (1) trustees are to be treated as *private customers* in sections 6.2 –6.5.**
- (3) **In addition to the information to be passed to trustees under COB 6.4.2(1) R, the *firm* must ensure that *key features* information is made available to the trustees for all scheme members at the outset of the scheme and for subsequent new members.**
- 6.4.3 R **COB 6.4.2 (3) R applies to main scheme benefits and to *additional voluntary contributions* where members' benefits are linked to earmarked segments of *life policies* or *schemes*. It does not apply where trustees make pooled investments and make their own arrangements for allocation of investment returns to determine members' benefits.**
- 6.4.4 G (1) The illustrative figures within the *key features* provided under COB 6.4.2(1) R can be on an example basis, using a range of *representative* actual or hypothetical scheme members (covering, for example, different ages, sexes and salaries) such that the trustees can assess the effectiveness of the investment for their pension scheme members.
- (2) The definition of *money-purchase occupational scheme* includes executive pension plans (established for *directors*, executives and senior *employees*), *small self-administered schemes* that provide *money-purchase benefits* and *additional voluntary contribution schemes*.
- (3) As group *personal pension schemes* are not *occupational pension schemes*, COB 6.4.2 R does not apply to these schemes and *firms* should therefore provide each *person* who is offered membership of a group *personal pension scheme* with *key features* in accordance with sections 6.1 and 6.2.

- 6.4.5 G The objective of COB 6.4.2 (3)R is to ensure that prospective scheme members have access to information about the *occupational pension scheme* that could enable comparison with alternative personal investments. *Firms* may decide for themselves the format (but not content) of this information. For example, individual sets of *key features* can be supplied or a schedule of details which the trustees or their advisers can assimilate into other pension scheme communications.

SELF-INVESTED PERSONAL PENSION SCHEMES

- 6.4.6 R **A *firm* which recommends, arranges or effects *packaged products* to or for a member, prospective member or trustees of a self-invested *personal pension scheme*, must provide *key features* to that member and trustees, in accordance with COB 6.2.7 and 6.2.22R.**

- 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. Cancellation notices should also be copied to SIPP members in these circumstances, in accordance with COB 6.7.17 R.

INCOME WITHDRAWALS

- 6.4.8 R **Subject to COB 6.4.10 to 6.4.12 R below, a *firm* which recommends, arranges or effects *income withdrawals* to or for a *private customer* must provide *key features* to the *customer* before he signs any form of application or authority electing to make those withdrawals, whether that election is made with *advice* or on an execution-only basis.**

- 6.4.9 R **In relation to an election to make *income withdrawals*, the requirements for the provision of *key features* in:**

- (1) **COB 6.2.7 R also apply where an existing *life policy* is to be endorsed; and**
- (2) **COB 6.2.22 R also apply where an existing *scheme holding* is to be used.**

- 6.4.10 R **In relation to an election to make *income withdrawals*, the requirements of 6.4.11 and 6.4.12 override the relevant requirement in section 6.2, where there is conflict.**

- 6.4.11 R **Where a *private customer* makes:**

- (1) **an election to begin *income withdrawals* within 12 months of that election from more than one *life policy* or *scheme holding*; or**
- (2) **a series of elections within a period of 12 months to make *income withdrawals*;**

the *firm* that is recommending, arranging or effecting the elections, may provide one combined set of *key features* for those *life policies* and/or one combined set of *key features* for those *schemes*.

- 6.4.12 R At intervals no longer than 12 months from the date of an election by a *private customer* to make *income withdrawals*, the relevant *product provider* must:
- (1) Provide the *private customer* with such information required by COB 6.6.12 R as will enable the *private customer* to review the election; and
 - (2) Inform the *private customer* how to obtain *advice* in respect of his *income withdrawals* and that it would be in his best interests to do so.

INDIVIDUAL SAVINGS ACCOUNTS

- 6.4.13 R A *firm* that manages, recommends or sells an *ISA* which is or includes a *cash deposit component*, must, in relation to that *cash deposit component* ensure that before the transaction is entered into the *private customer* is provided with *key features* which, as a minimum, contain the information specified in COB 6.5.29 R.

SECOND-HAND LIFE POLICIES

- 6.4.14 R Where a *private customer* is being recommended to purchase a *second-hand life policy*, the *firm* responsible for the recommendation need not provide *key features*, but if it does not it must instead supply the information outlined in COB 6.5.31 R.
- 6.4.15 R The information required by COB 6.4.14 R must be supplied in writing to the *private customer* before he is asked to complete any form of application or authority giving effect to the purchase of the *second-hand life policy*.

STAKEHOLDER PENSION SCHEMES

- 6.4.16 R A *firm* which manages, recommends or sells a *stakeholder pension scheme* for or to a *private customer*, or which arranges for the sale of a *stakeholder pension scheme* to a *private customer* must, subject to COB 6.4.19R, provide the *private customer* with appropriate *key features* before the *private customer* completes an application for the *stakeholder pension scheme*.
- 6.4.17 R Where a *firm* proposes to deal with a *private customer* on the telephone for the purposes of providing information through decision trees about *stakeholder pension schemes*, the *firm* shall only do so provided it has adequate evidence to show that the *private customer* has access to a copy of a decision tree (as set out at COB 6.5(1)A R) during the conversation.

- 6.4.18 G COB 6.4.17 R is intended to ensure that where a *firm* takes a customer through the decision tree process by telephone it takes reasonable care to ensure that the customer has a decision tree in front of him. For example, on first contact *firms* could enquire whether the customer has a decision tree, and if not, send one to him before taking him through the decision tree process during a follow-up telephone call.
- 6.4.19 R **COB 6.4.16R does not apply to a stakeholder pension scheme manager where its stakeholder pension scheme is sold by, or arranged to be sold by, an independent intermediary, unless the intermediary is also the manager of the stakeholder pension scheme.**
- 6.4.20 R (1) **A firm recommending, arranging or effecting the purchase of a new group or master *life policy*, the first in a series of individual *life policies* or the first purchase of units in a particular scheme to or for the trustees or the manager of a stakeholder pension scheme must provide them with key features, in accordance with COB 6.2.7 and 6.2.22R.**
- (2) **For the purposes of (1) trustees and managers are to be treated as private customers in section 6.2-6.5.**
- 6.4.21 G The illustrative figures within the *key features* provided under COB 6.4.20 R can be on an example basis, using a range of representative actual or hypothetical scheme members (covering, for example, different ages, sexes and salaries) so that the trustees or manager can assess the effectiveness of the investment for scheme members.
- 6.4.22 R **Where, as a result of a direct offer financial promotion a firm enters into an investment agreement concerning a stakeholder pension scheme with a private customer, a firm must, no later than the issue of the post-sale notification of the private customers right to cancel under the cancellation rules, provide the private customer with a written notice containing the information specified in COB 6.4.23 R.**
- 6.4.23 R The notice in COB 6.4.22 R must:
- (1) **remind the private customer that a copy of the decision trees has been provided to him within the key features; and**
- (2) **remind the private customer that it is important to be satisfied that a stakeholder pension scheme is appropriate according to his own circumstances.**
- 6.4.24 R **Where a firm provides a private customer with information through decision trees concerning membership of a stakeholder pension scheme but does not give advice or make a specific recommendation, the firm must provide the private customer with a written notice containing the information specified in COB 6.4.26 R.**
- 6.4.25 R **A written notice required by COB 6.4.24 R must be provided by the firm no later than the issue of the post-sale notification of the private customer's right to cancel under the cancellation rules.**

6.4.26 **R** **The notice in COB6.4.24 R must:**

- (1)** **confirm that no *advice* has been given and that the *private customer* has decided that the *stakeholder pension scheme* is appropriate as a result of the answers he has given to the questions posed in the decision tree; and**
- (2)** **include a copy of the decision tree indicating the answers which the *private customer* has given.**

6.5 CONTENT OF KEY FEATURES AND IMPORTANT INFORMATION – LIFE POLICIES, SCHEMES, ISA CASH DEPOSIT COMPONENTS AND STAKEHOLDER PENSION SCHEMES

GENERAL

- 6.5.1 R Subject to **COB 6.5.2R**, a *firm* must ensure that any:
- (1) ***key features* it produces for a packaged product other than a stakeholder pension scheme includes the sub-headings set out in Table 6.5(1) R and contains the applicable information specified in COB 6.5.4- 6.5.28 R appropriate to those sub-headings;**
 - (2) ***key features* it produces for an *ISA cash deposit component* contains the applicable minimum information in COB 6.5.29 R;**
 - (3) **information document or abbreviated form of *key features* it produces relating to *friendly society tax-exempt policies, second-hand life policies, or broker funds*, contains the applicable information specified in COB 6.5.30- 6.5.32 R;**
 - (4) **post-sale confirmation document it produces contains the applicable information specified in COB 6.5.33 R.**
 - (5) ***key features* it produces for a *stakeholder pension scheme* includes the sub-headings set out at Table 6.5(1)R, the applicable information specified in COB 6.5.4 - 6.5.28R appropriate to those sub-headings, and the decision trees set out at Table 6.5(1)A R.**
- 6.5.2 R **Subject to 6.5.3R, a *firm* may adapt the prescribed content and format requirements in this section 6.5 only where it can demonstrate that this is necessary to reflect the terms and nature of a particular product.**
- 6.5.2A** R **The only adaptation a *firm* may make to the decision trees set out at Table 6.5(1)A R is to include the *firm's* corporate logo the name of the *firm* and contact points.**
- 6.5.3 G (1) Where the *rules* in this section do not require the use of prescribed text *firms* may give the relevant information using their own words and style.
- (2) For the purposes of COB 6.5.1R(1):
- (a) A *firm* which offers more than one *scheme* may choose whether to produce separate *key features* for each *scheme* (including a fund or sub-fund or *share* class), or to produce a single *key features* to cover a range of funds (provided the differences between those funds are made clear).
 - (b) Where a publication covers more than one *scheme* (for example, in the case of a year book comprising information on all the funds offered by a *unit trust manager*), it might consist of *key features* section at the beginning giving

details common to all the relevant funds (whether *unit trusts*, *OEICs*, sub-funds of an umbrella fund or *share* classes within an *OEIC*), followed by separate pages setting out, for each fund, those items which are specific to it, for example 'Aims', 'Risk Factors' and 'Charges and their Effect'.

TABLE OF KEY FEATURES SUB-HEADINGS (REFERRED TO IN COB 6.5.1(1))

**Table
6.5 (1)R**

Key features sub-heading	Rule reference
KEY FEATURES OF THE (NAME OF LIFE POLICY OR SCHEME <u>OR STAKEHOLDER PENSION SCHEME</u>)	COB 6.5.4R
NATURE OF LIFE POLICY OR SCHEME <u>OR STAKEHOLDER PENSION SCHEME</u>	COB 6.5.5R
AN EXAMPLE	COB 6.5.7- 6.5.10 R
DESCRIPTION OF THE LIFE POLICY OR SCHEME <u>OR STAKEHOLDER PENSION SCHEME</u>	COB 6.5.11 R
TABLES:	
LIFE POLICIES	COB 6.5.14- 6.5.16 R
SCHEMES	COB 6.5.20- 6.5.21 R
<u>STAKEHOLDER PENSION SCHEMES</u>	<u>COB 6.5.25A R</u>
DEDUCTIONS SUMMARY:	
LIFE POLICIES	COB 6.5.17- 6.5.18 R
SCHEMES	COB 6.5.22- 6.5.23 R
COMMISSION AND REMUNERATION	COB 6.5.26 R
FURTHER INFORMATION	COB 6.5.28 R

TABLE OF DECISION TREES (REFERRED TO IN COB 6.5.1(5)R)

**Table
6.5(1)A
R**

Where a firm uses decision trees outside a key features document, it must reproduce the decision trees as set out in this Table 6.5(1)A R. Where a firm knows that a certain decision tree or trees will not be relevant to the customer to whom the key features are to be given, the firm can omit them and only include the relevant decision tree or trees.

<u>Decision Trees</u> [see Annex E to main consultation paper]

- 6.5.3A G There are three versions of the decision trees – for employed persons, the self-employed and those not in employment. The specified introductory text is a required part of each decision tree. Firms are permitted to issue one decision tree, consisting of the introductory text and the relevant version of the flowcharts, where the employment status of the customer is known. In other circumstances, the introductory text and all three versions of the flowcharts should be included. This guidance applies whether decision trees are within the *key features* document or are used separately. Every set of *key features* for a *stakeholder pension scheme* will need to include a decision tree(s), even where a customer has been taken through a tree as part of an information process.

TITLE

- 6.5.4 R A *firm* must include this heading:

'KEY FEATURES OF THE [Name of Life policy/Scheme]'

NATURE OF LIFE POLICY/SCHEME/STAKEHOLDER PENSION SCHEME

- 6.5.5 R (1) A *firm* must describe the nature of the *life policy, scheme or stakeholder pension scheme* under the following headings: 'ITS AIMS', 'YOUR COMMITMENT or YOUR INVESTMENT' (whichever is more appropriate) and 'RISK FACTORS';

(2) under 'RISK FACTORS' a *firm* must give a brief description of the factors which may have an adverse effect on performance or are otherwise material to the decision to invest.

- 6.5.6 G Risk factors consist of an explanation of those risks which a *private customer* who has purchased a *packaged product* might bear. The following list is not exhaustive but indicates the type of risk which should be drawn out clearly so that *private customers* will understand the risks before they commit themselves to a purchase. The explanation might include an indication of:

- (1) whether the value of the capital and any income from it might fluctuate;
- (2) cancellation issues, including the fact that, if the value of the investment falls before notice of cancellation is given, a full refund of the original investment may not be provided but rather the original amount less the fall in value;
- (3) particular risks, if any, associated with the underlying assets in which the *packaged product* is invested;
- (4) risks associated with the markets in which investments will be made, with particular reference to emerging markets; such risks might include *dealing* difficulties, settlement and *custody* practices;
- (5) special risks such as capital erosion or constraints on capital growth in the case of funds where *charges* are deducted from capital, or where buying income or dividend stripping forms part of the investment strategy;
- (6) volatility, in particular with regard to *higher volatility funds* such as *geared futures and options funds* and *warrant funds* and the fact that the loss on realisation of the investment could be very high, even equaling the amount originally invested;
- (7) the inclusion of a 'market value adjustment' in respect of unitised with-profits funds and the risk that, in adverse circumstances, benefits could be reduced;

- (8) potential problems with investment in property in respect of liquidity, and the fact that repurchase or surrender might be delayed during a period when the property is not readily saleable, and that property valuation is a matter of judgment by a valuer;
- (9) in the case of a *broker fund*, whether the *private customer* has the right, or may be required, to transfer out of that fund to any other fund or *scheme* of a *firm*; if so, the name of the fund or *scheme*, the transfer terms and the circumstances in which, and by whom, such a transfer may be required or made;
- (10) the risk that a current favourable situation may not be maintained in future, for example the tax treatment of *ISAs*;
- (11) the fact that if the *private customer* does not maintain contributions he may not meet any target benefit which has been projected and may lose the benefits of any life protection;
- (12) in the case of a new fund, the risk that, if its assumed size is not achieved, the proportion of *charges* and expenses allocated to the investment may be higher and the value of the investment consequently reduced;
- (13) the fact that there is no guarantee that a *life policy* such as an *endowment assurance* used to repay an interest-only mortgage will produce sufficient funds at the end of the mortgage term;
- (14) the fact that with personal pensions there may be penalties if the *private customer* takes the benefits before the stated retirement date;
- (15) in the case of a guaranteed *packaged product*, where it is a possibility, the fact that there may be a capital shortfall at the end of the contract; where there is a fixed regular payment of income, it should be drawn to the attention of the *private customer* that such payments often involve a risk to capital.

AN EXAMPLE

- 6.5.7 **R** A *firm* must include a ***projection***, illustrating how the principal terms of the proposed transaction apply to the *private customer*:
- (1) Where the proposed transaction is for a *life policy*; or
 - (2) Where the proposed transaction is for a *scheme*:
 - (a) and relates to an election to make *income withdrawals*: or
 - (b) where the *private customer's* primary objective is to acquire
 - (i) a specified sum of *money* on a specified date; or
 - (ii) a specified sum of *money* on death; or
 - (iii) an annuity of a specified amount payable as from a specified date;
- 6.5.8 **G** A *projection* may be included for *schemes* where COB 6.5.7 (2) R does not require one, at a *firm's* discretion.

6.5.8A G Where the proposed transaction is for a *stakeholder pension scheme*, a specimen projection will have been included within the decision tree associated with the *key features*. There is no requirement within these rules for a personalised projection within *the key features* for a *stakeholder pension scheme*. Where projections are given for *stakeholder pension schemes* on other circumstances, for example where a scheme member requests a personalised projection, they should follow the standard projection rules in COB 6.6.

6.5.9 R All projections included within key features, other than a specimen projection contained within a decision tree for a *stakeholder pension scheme*, must be calculated in accordance with COB 6.6 (projections) using the lower, intermediate and higher rates of return in COB 6.6.44 R and followed by the appropriate statements from the Tables in COB 6.6.14 R.

6.5.10 R (1) A *life policy projection* within *key features* must be specific to the *private customer*, calculated on the basis of the *private customer's* age, sex, the sum assured, the *premium* and other principal factors of the proposed *life policy* unless:

- (a) the *life policy* is a single *premium life policy*; or
- (b) the total *premiums* payable do not exceed £120 per year (or £130 per year if the *premiums* are paid every four weeks); or
- (c) the total *premiums* are less than £1,000; or
- (d) the *key features* are part of a *direct offer financial promotion*.

If (a), (b), (c) or (d) applies and no *customer specific projection* is included, a *projection* must be provided which typically represents the type of business which the *firm* conducts (or proposes to conduct) in relation to the *life policy* in question.

(2) A *scheme projection* within *key features* must be based on either:

- (a) the actual amount(s) which the *private customer* is proposing to invest; or
- (b) an amount(s) which typically represents the type of business which the *firm* conducts (or proposes to conduct) in relation to the *scheme* in question;

Unless it is for *income withdrawals*, when it must be on the basis of (a).

DESCRIPTION OF THE LIFE POLICY, SCHEME OR STAKEHOLDER PENSION SCHEME

- 6.5.11 R **Subject to COB 6.5.17R, a firm must set out in the form of questions and answers a description of the principal terms of the *life policy, scheme or stakeholder pension scheme* and any other information necessary to enable the *private customer* to make an informed decision.**
- 6.5.12 G Particular information which should be provided in this section includes:
- (1) for a *life policy* such as an endowment which is being used to repay an interest-only mortgage, details of how and when the *private customer* will be notified whether the *life policy* is on target to provide sufficient funds to repay the loan and, if it is not, what options the *private customer* has;
 - (2) the consequences of making a *life policy* paid up or taking a contribution holiday;
 - (3) for an FSAVC, a prominent warning that as an alternative a scheme AVC exists, details of which can be obtained from the *occupational pension scheme* administrator;
 - (4) for long term care insurance *packaged products* which are based on single *premium* investment bonds:
 - (a) a statement drawing attention to the possible effect on the capital invested where withdrawals are taken to pay for care; this can be communicated by including a standard, non *client*-specific example comparing the effect of claim payments on the value of the *life policy*, first assuming no claims and then assuming a claim beginning at age 80 and lasting for 5 years; the standard mid rate of return should be used assuming claim payments at the highest benefit level payable under the *life policy*, and
 - (b) information to make the *private customer* aware that he can use *key features* to compare the investment potential of different *product providers' packaged products*, for example *surrender values* at various times and the effect of deductions.
 - (5) For a *personal pension scheme*, including a GPP, a clear and prominent indication of the general availability of *stakeholder pension schemes* and the fact that these might meet the consumer's needs at least as well as the *personal pension scheme* on offer.
 - (6) for a *stakeholder pension scheme* a description of the default investment option offered by virtue of Regulation 3(5) of the Stakeholder Pension Schemes Regulations 2000.

TABLES AND DEDUCTIONS SUMMARIES FOR LIFE POLICIES, SCHEMES AND STAKEHOLDER PENSION SCHEMES

- 6.5.13 G (1) COB 6.5.14- 6.5.19 set out the Tables, Deductions Summary and method of calculating the 'Effect of deductions to date' for *life policies*.
- (2) COB 6.5.20- 6.5.25 set out the Tables, Deductions Summary and method of calculating 'Effect of deductions to date' for *schemes*.
- (3) COB 6.5.25A R outlines a simplified illustration of charges for *stakeholder pension schemes*. There is no requirement for the tables of figures or the reduction in yield summary required for *life policies* or *schemes*.

TABLES FOR LIFE POLICIES

6.5.14 R For *life policies* which can have a *surrender value*, a *firm* must include the contents of Table 6.5(2)R unless COB 6.5.18 R applies.

Table 6.5 (2)R

THE EARLY YEARS				
<p>‘WARNING - if you cash in during the early years you could get back less than you have paid in.’</p> <p>‘The last two columns assume that investments will grow at [insert the intermediate rate appropriate to the type of <i>life policy</i> set out in COB 6.6.44 R] a year.’</p>				
At end of year	Total paid in to date	[Total actual deductions to date]	Effect of deductions to date	What you might get back
	£	£	£	£
1				
2				
3				
4				
5				
THE LATER YEARS				
<p>Notes:</p> <p>The column headed 'Total actual deductions to date' is optional. If included, it must follow the requirements in COB 6.5.14- 6.5.19 R.</p> <p>In the case of a <i>Holloway sickness policy</i>, an indication of the total cost of risk benefits expressed as a figure in £s may be given by way of a footnote to the column headed 'Effect of deductions to date'.</p>				

6.5.15 R When completing Table 6.5(2) R a *firm* must:

- (1)** under 'THE EARLY YEARS' include figures for the first five years of the *life policy* or, if the *life policy* has a fixed term of less than five years, as many of them as fall before the maturity date;
- (2)** under 'THE LATER YEARS' include figures for the tenth and every subsequent fifth year of the term of the *life policy* (or of the contract period as defined in COB 6.6.22 R if that is shorter) and for the final year, except in the following cases:
 - (a)** for a whole-life *policy*, figures must be included for every tenth year and:
 - (i)** the final year, assuming that the *life policy* will continue (unless and until converted to a fixed term) until the insured life (or the youngest insured life) attains the age of 75 years or to a term of 10 years if that is later; or
 - (ii)** the year in which the projected fund reaches zero if earlier than (i); the consequences of this must be drawn to the *private customer's* attention;
 - (b)** in the case of a single *premium life policy* with no fixed term, a term of 10 years should be assumed;
 - (c)** for a ten-year *life policy*, the figures for the final year may be included in the 'EARLY YEARS' table;
 - (d)** for a *personal pension policy* with *income withdrawals*, there is an option to quote figures for the sixth year and at three-yearly intervals thereafter;
 - (e)** where there is any significant discontinuity in the trend of surrender or transfer values, figures should be given for all the intervening years;
- (3)** in the 'Total paid in to date' column, include cumulative totals of *premiums* paid (making adjustment as necessary to take account of any automatic *premium* changes);
- (4)** in the 'Total actual deductions to date' and 'Effect of deductions to date' columns, include the cumulative sum of the *charges* and expenses (as defined in COB 6.6.19 R) and the cost of any protection benefits expected to be levied against the *life policy*; they must be calculated in accordance with COB 6.5.19 R;

- (5) in the 'What you might get back' column, include *projections of surrender values for the life policy*:
- (a) these must be calculated in accordance with COB 6.6.34 R (*projections – surrender values*) assuming the *premium* and any other relevant matters given for the purposes of COB 6.5.5R (Nature of *Policy*) and COB 6.5.7 R (An Example);
 - (b) the *surrender value* of a *premium* on a particular date must be calculated by assuming that any *premium* payable on that date is payable on the following day;
 - (c) where any *surrender values* are guaranteed they must be provided with a suitably adjusted heading and introductory text;
- (6) where the *life policy* is a personal pension, replace 'What you might get back' with 'What the transfer value might be' and make suitable amendments to the explanatory text; for a *personal pension policy* with *income withdrawals* it must be replaced with 'Open market value';
- (7) where the *private customer* is entitled to exercise and has chosen, or expressed the intention, to exercise the right to make partial surrenders, include a column headed 'Withdrawals' or, in the case of a personal pension with *income withdrawals*, 'Total income taken'; the sum of withdrawals must be shown;
- (8) for a personal pension with *income withdrawals*, include a table headed 'WHAT EFFECT WILL THE DEDUCTIONS HAVE?' instead of 'THE EARLY YEARS' and 'THE LATER YEARS'; where there is any *charge* or penalty in calculating the open market value, all the years to which this applies should be given;
- (9) In the case of a long term care insurance *packaged product* based on a single *premium* investment bond, where the standard 10-year table does not illustrate adequately how the *charges* taken from a *policy* can increase considerably with age:
- (a) the table must be extended to show figures at ten-year intervals and the year in which the *private customer* attains 100 years or the year the fund is exhausted if earlier; but
 - (b) the standard ten-year figure must be used for the reduction in yield and the accompanying words amended accordingly.

- 6.5.16 R **COB 6.5.14- 6.5.15 R do not apply to a *life policy* which will never have a *surrender value*; the following warning must be given instead of the tables:**

‘WARNING – this policy has no cash-in value at any time.’

DEDUCTIONS SUMMARY FOR LIFE POLICIES

- 6.5.17 R **The following statements must appear beneath the information required by Table 6.5(2)R, unless COB 6.5.18 R applies:**

‘What are the deductions for?’

‘The deductions include [the cost of life cover, sickness benefits,] [commissions/remuneration,] expenses, charges, any surrender penalties and other adjustments.’

‘The last line in the table shows that over the full term of the policy the effect of the total deductions could amount to £x.’

and then either:

‘Putting it another way, leaving out the cost of life cover [and sickness benefits] this would have the same effect as bringing investment growth from x% a year down to y% a year.’

Or

‘Putting it another way, if the growth rate were to be x%, which is in no way guaranteed, this would have the effect of reducing it to y% a year.’

- 6.5.18 R **The information relating to ‘Total actual deductions to date’ and ‘Effect of deductions to date’ in COB 6.5.14 R, and the information relating to reduction in yield required by COB 6.5.17 R, do not need to be given for the following categories of *life policy*:**

- (1) a without-profits *life policy* of which the benefits, except on surrender or variation, are guaranteed benefits;**
- (2) a *life policy* for a term not exceeding five years.**

CALCULATION METHOD FOR ‘EFFECT OF DEDUCTIONS TO DATE’ FOR LIFE POLICIES

- 6.5.19 R **In Table 6.5(2) R the ‘Total actual deductions to date’ and the ‘Effect of deductions to date’ must be calculated for each of the years detailed in COB 6.5.15 R. These are the amounts of all deductions that are expected to be levied against the assets and *premiums* in respect of *charges* and expenses (as defined in COB 6.6.19R), surrender penalties, as well as allowance for the cost of risk benefits (defined in**

COB 6.6.24 R) to the end of the year. They must be calculated as follows.

- (1) The *premiums* must be accumulated at the intermediate rate prescribed in COB 6.6.44 R for the category of *life policy* to which the *key features* relates (the 'prescribed rate') making no allowance for *charges* and expenses and other deductions.**
- (2) 'Effect of deductions to date' must be derived by subtracting the amount shown in the column 'What you might get back' from *premiums* accumulated in accordance with (1).**
- (3) The figures in the column 'Effect of deductions to date' must reflect the *charges* and expenses accumulated at the prescribed rate. The column headed 'Total actual deductions to date' must show the sum of actual deductions.**
- (4) The deductions for each year must be calculated by subtracting from the 'Effect of deductions to date' for that year the 'Effect of deductions to date' for the previous year (if any) increased by the amount of interest for the year calculated at the prescribed rate.**
- (5) 'Total actual deductions to date' is the sum of the figures derived in accordance with (4) for the year in question and all previous years; where it is negative, nil must be shown for that year.**

TABLE FOR SCHEMES

6.5.20 R For *schemes*, a *firm* must include the contents of Table 6.5(3) R.

Table 6.5(3)R

'HOW WILL CHARGES AND EXPENSES AFFECT MY INVESTMENT?'			
<p>[Give an indication of the nature and amount or rate of the <i>charges</i> and expenses which the <i>private customer</i> will or may bear, including any relevant proportion of <i>scheme charges</i> deducted directly from the fund or not directly attributed to the account of the <i>private customer</i>. In describing the nature of <i>charges</i> state how the <i>charges</i> will be made, in particular whether they will be taken from capital or income.]</p> <p>[Give a statement that there is a buying price and a selling price (if that is the case) and that the difference between them is called the 'spread', and an indication of where up-to-date information may be obtained on these prices.]</p>			
<p>'Their effect on an investment of £_____ assuming growth of [insert the intermediate rate appropriate to the type of <i>scheme</i> set out in COB 6.6.44 R)] a year, is set out below'</p> <p>[Where under COB 6.5.7(2) R a <i>projection</i> is not a requirement, include a statement that the figures are not guaranteed and serve only to demonstrate the effect of <i>charges</i> and expenses on an investment.]</p>			
At end of year	Investment to Date	Effect of deductions to date	What you might get back [at the appropriate intermediate rate]
	£	£	£
1			
3			
5			
10			

- 6.5.21 R When completing Table 6.5(3)R a *firm* must replace wordings in brackets as directed by the instructions in those brackets and:
- (1) when the inclusion of a *scheme projection* within *key features* is compulsory in accordance with COB 6.5.7(2) R, must include figures calculated in accordance with COB 6.6 (*projections*):
 - (a) at the end of years 1, 3, 5 and 10 and (optionally) for years 2 and 4;
 - (b) then for each fifth year following the tenth year which falls within the period of the *projection*; and
 - (c) the final year of the *projection*;
 - (2) when a *scheme projection* is not required by COB 6.5.7(2) R but is included at a *firm's* discretion, must include figures at the end of years 5 and 10 and (optionally) for years 1 and 3 or for years 1 to 4, all calculated in accordance with COB 6.6 (*projections*);
 - (3) in the 'Investment to date' column, must include:
 - (a) the actual amount(s) which the *private customer* is proposing to invest; or
 - (b) an amount(s) which is *representative* of the type of business which the *firm* conducts (or proposes to conduct) in relation to the contract in question;

but where, under COB 6.5.7(2)R, a *projection* is included in the *key features*, the amount shown as the 'Investment' must be the same as the amount used as the basis for the *projection*;
 - (4) in the 'Effect of deductions to date' column, include the cumulative sum of *charges* and expenses (as defined in COB 6.6.19R) for each of the years shown; such figures must be calculated in accordance with COB 6.5.24 R (Calculation Method for 'Effect of deductions to date');
 - (5) in the 'What you might get back' column, include figures taking account of *charges* and expenses showing what the value might be if the *scheme* is cashed in;
 - (6) where the contract is a personal pension, replace 'What you might get back' with 'What the transfer value might be' and make suitable amendments to the explanatory text; for a *personal pension contract* with *income withdrawals* it must be replaced with 'Open market value';

- (7) include extra columns in the Table in the following cases:
- (a) where the *private customer* is entitled to exercise and has chosen, or expressed the intention, to exercise the right to make partial withdrawals, an extra column must be included headed 'Withdrawals' or, in the case of a *personal pension contract with income withdrawals*, 'Total Income taken'; 'Withdrawals' must include distributions of income;
 - (b) where the investment involves periodic redemptions at pre-determined intervals to make payments to the *private customer* a column headed 'Redemptions' is needed;
 - (c) where the investment distributes income and does not involve the automatic reinvestment of this income a column headed 'Income' must be included;

in (a), (b) and (c) the arithmetic sum of the withdrawals/redemptions/income payments must be stated, on the assumption that these are made throughout on the same basis as contemplated at the time the *projection* was prepared; the method set out in COB 6.6.32 R must be used to calculate distributions of income;

- (8) for a *personal pension contract with income withdrawals*, include in a table under the heading 'WHAT EFFECT WILL DEDUCTIONS HAVE?' figures for every third year or every fifth year; where there is any *charge* or penalty in calculating the open market value, all the years to which this applies must be given;
- (9) include a statement that allowance for tax relief has been made in the calculation where any tax relief available to the *scheme* has been taken into account in the calculation of *charges* and expenses.

DEDUCTIONS SUMMARY FOR SCHEMES

- 6.5.22 R The following statements must appear beneath the information required by Table 6.5(3)R:

'The last line in the table shows that over [n] years the effect of the total charges and expenses could amount to £x'.

and then:

'Putting it another way, if the growth rate were to be (x)%, which is in no way guaranteed, this would have the effect of reducing it to (y)% a year';

OR

‘Putting it another way, this would have the same effect as bringing investment growth from (x)% a year down to (y)% a year’.

- 6.5.23 R (1)** The figure [n] in the prescribed wording in *COB 6.5.22 R* is the number of years in figures given at the bottom of the table, as appropriate for each transaction.
- (2)** The ‘Investment to date’ must be accumulated to the end of [n] years at the relevant rate of return (x)% making full allowance for the *charges* and expenses (as specified in *COB 6.6.19R*).
- (3)** The rate of return (y)% must be found which, if applied (on a compound basis) to the amounts included in the ‘Investment to date’ column over the [n] years, without making any allowance for the *charges* and expenses, would produce the same sum as that calculated in (2).

CALCULATION METHOD FOR ‘EFFECT OF CHARGES TO DATE’ FOR SCHEMES

- 6.5.24 R** For each year, figures must be given for the effect of deductions assuming the fund grows in accordance with a relevant rate of return (as defined in *COB 6.6.29 R*). These calculations must reflect all deductions (*charges* and expenses as defined in *COB 6.6.19 R*) expected to be levied against the fund and against the *private customer’s* investment. The calculations must be made on the basis of the following principles.
- (1)** For each year the ‘Investment’ must be accumulated, at the relevant rate of return (as specified in *COB 6.6.29 R*), to the end of each year making due allowance for the *charges* and expenses.
- (2)** For each year the ‘Investment’ must be accumulated, at the relevant rate of return, to the end of each year but making no allowance for the *charges* and expenses;
- (3)** The ‘Effect of deductions to date’ is the amount calculated in (1) subtracted from the amount calculated in (2).
- (4)** A rate of return which is lower than the relevant rate of return must be used where the *firm* expects that rate would imply an overstatement of the investment potential.
- (5)** The calculations specified in (1) and (2) must allow for any partial encashment of *units* or *shares* or distributions of income where under the terms of the *scheme* the *private customer* has exercised, or has expressed the intention of exercising, an option to make such encashments or to receive such income or where such encashments or distributions will automatically

apply. The allowance must be assumed in accordance with the estimated rate or amount, unless to do so would be inappropriate for that *scheme*.

6.5.25 G COB 6.5.24 (5) R applies, for example, to *money market schemes* and bond funds.

TABLE FOR STAKEHOLDER PENSION SCHEMES

6.5.25A R The following statement must appear beneath or within the information required by COB 6.5.11 R:

“There is an annual charge of [y]% of the value of the funds you accumulate. If your investment is valued at £500, this means we deduct [£500 x y/100] that year. If your investment is valued at £7500, we will deduct [£7500 x y/100] that year”.

COMMISSION AND REMUNERATION FOR LIFE POLICIES SCHEMES AND STAKEHOLDER PENSION SCHEMES

6.5.26 R A *firm* must include under the heading ‘How much will the advice cost?’ either the statement prescribed in (1) or the details required by (2):

- (1) ‘Your adviser will give you details about the cost. The amount will depend on the size of the premium and the length of the policy term. It will be paid for out of the deductions [or charges, if more appropriate].’
- (2)
 - (a) The amount or value in cash terms of the *commission* or *remuneration* and an indication of the timing of these payments;
 - (b) a statement that *commission* or *remuneration* is paid for out of the deductions [or *charges*, if more appropriate] and, if applicable, that the amount will depend on the size of the *premium/contribution* and the length of the *life policy* or *scheme* term.

6.5.27 G In COB 0(2) R the name of the *adviser* to whom the *commission* or *remuneration* is to be paid may be given.

FURTHER INFORMATION FOR LIFE POLICIES AND SCHEMES

6.5.28 R A *firm* must include the following information in the *key features*, separately or as part of the information required by COB 6.5.1R(1):

- (1) for *life policies*:

- (a) a clear indication, in one place, of the nature and amount or rate of any *charges* or expenses which the *private customer* will or may bear; if *charges* or expenses are levied in the form of reduced investment, both the method and effect must be clearly explained; in the case of a single *premium charge* for mortality or morbidity under *linked benefit policies* it is sufficient to describe its nature and basis;
 - (b) the information that Annex II of the *Third Life Directive* requires to be communicated to policyholders which is specified in Table 6.5(4)R; and
 - (c) an explanation how the *private customer* may obtain further information about compensation arrangements and other matters relating to the *life policy*;
- (2) for all *schemes*, an explanation that other information about the *scheme* is available on request and how it may be obtained;
- (3) for *regulated collective investment schemes* and for such investments held within a *PEP* or an *ISA*:
- (a) a statement where details of the latest estimated distribution yield and buying and selling prices can be found;
 - (b) in the case of any purchase, how and when the price to be allocated in respect of each payment will be determined;
 - (c) whether certificates will be issued and, if so, when they will be sent;
 - (d) how *units* or *shares* may be redeemed and when payment on *redemption* will be made;
 - (e) the names and addresses of the *scheme managers* or *authorised corporate director*, and the names of the trustees, or *depository* (if any);
 - (f) where and how copies of *scheme particulars*, annual and half-yearly reports and accounts and prospectuses can be obtained;
 - (g) an explanation of any relevant right to cancel or withdraw, or, where it is the case, that such rights do not apply;
 - (h) how complaints and queries are dealt with and how further details of compensation arrangements (if any) can be obtained;

- (i) a summary of the *private customer's* potential liability (if any) to income tax and capital gains tax;
 - (j) where the investment is to be held within a *PEP* or an *ISA*, a statement, if applicable, that it will not be possible for the *plan manager* to reclaim tax in respect of tax credit attaching to a foreign income dividend or of any equalisation distributed as income;
 - (k) whether the *private customer* has a choice to reinvest income, where uninvested *money* will be held and whether interest is paid on such *money*;
- (4) for *investment trust savings schemes* and for such investments held within a *PEP* or an *ISA*:
- (a) when *shares* will be purchased for the *scheme*, where uninvested *money* will be held and whether interest is paid;
 - (b) where information about the *investment trust share* price, yield, and *premium* and discount information can be obtained;
 - (c) where information about the net asset value and latest dividend can be found;
 - (d) whether the *private customer* has a choice to reinvest income, how it is reinvested, or how it is paid to the *private customer*;
 - (e) details of any nominees with whom *shares* are registered;
 - (f) how *shares* can be sold and how the sale proceeds are determined;
 - (g) whether applications and payments will be acknowledged and whether contract notes or certificates are issued;
 - (h) whether there will be a statement of account showing details such as number and cost of *shares* and balance of cash;
 - (i) an explanation of any right to withdraw (as specified under *COB 6.7*) or, where it is the case, that such rights do not apply;
 - (j) where the *investment trust* report and accounts may be obtained;
 - (k) information about the manager and administrator of the *scheme*;

- (l) the *private customer's* options in the case of items such as rights issues;
 - (m) how to stop investing in or how to leave a *scheme* and the position in respect of the *shares* held;
 - (n) terminations or alterations by the *scheme manager*;
 - (o) taxation details in respect of the *private customer's* investment;
- (5) (p) how complaints are dealt with and how further details of compensation arrangements (if any) can be obtained;

for *ISAs* with a *life policy* (insurance) or equity (stocks and *shares*) component and PEPs, in addition to (1), (2), (3) or (4) the following must be included:

- (a) a description of the nature of the services which will be provided for the *private customer*;
- (b) for *ISAs* or *ISA* components which are stated as satisfying the *CAT standards*:
 - (i) a table comparing the *ISA* or *ISA* component with the *CAT standards*;
 - (ii) clarification that satisfying the *CAT standards* does not mean that the investment is appropriate for the *private customer* or that there is any guarantee of performance;
- (c) the fact, if applicable, that an *ISA* does not meet the *CAT standards* together with any relevant explanation;
- (d) a statement that the favourable tax treatment of *ISAs* may not be maintained;
- (e) how and when statements (if any) will be sent;
- (f) an explanation how the *ISA* or plan may be terminated or transferred to another *plan manager*;
- (g) whether the *ISA* is a mini- or *maxi-ISA* agreement and an explanation of the differences between the two.

Information requirements for *ISAs* with a cash deposit component, friendly society tax-exempt policies, second-hand life policies and broker funds

ISA CASH DEPOSIT COMPONENTS

- 6.5.29 R For an *ISA* comprising or including a *cash deposit component*, the *private customer* must be given the following minimum information (in accordance with COB 6.4.13 R) in place of *key features*:
- (1) (a) for an *ISA* component) which is stated as satisfying the *CAT standards*, a table comparing it with the *CAT standards*; or
(b) if the *ISA* component is not stated as satisfying the *CAT standards*, a statement making this clear, together with, if desired, any relevant information;
 - (2) a statement making it clear whether the *ISA* is a mini- or a *maxi-ISA* agreement and explaining the differences between the two;
 - (3) for an *ISA cash deposit component*, a statement that the amount that can subsequently be invested in equities within an *ISA* is reduced;
 - (4) the minimum amount needed to open an account;
 - (5) the maximum yearly *deposit*;
 - (6) the interest rate earned, and if and how it may vary;
 - (7) the calculation of interest;
 - (8) how to make withdrawals and any limits;
 - (9) the amount of any *commission* or *remuneration*;
 - (10) details of the arrangements for application of the right to cancel;
 - (11) the arrangements for handling complaints;
 - (12) that the favourable tax treatment may not be maintained;
 - (13) where applicable, that the *private customer's* monies will not be within the scope of any *private customer* compensation scheme;
 - (14) where applicable, that the *firm* cannot accept *money* directly and acts only as agent in arranging the *cash deposit*, identifying the *principal* to whom such monies should be made payable, and explaining that the *principal* has accepted responsibility for the activities of the *firm* in relation to the *cash deposit*;
 - (15) that a *private customer* in doubt whether an *ISA* is suitable should seek *advice* and that the *private customer* may have to bear the cost of this *advice*.

FRIENDLY SOCIETY TAX EXEMPT POLICIES

- 6.5.30 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 rules)**, issue an abbreviated form of *key features* containing only the details of:
- (1)** the amount of the contribution;
 - (2)** the term over which the contribution will be paid;
 - (3)** material differences between the terms of any increase and those of the existing *policy*;
 - (4)** the amount or value in cash terms of the *commission* or *remuneration*.

SECOND-HAND LIFE POLICIES

- 6.5.31 R When recommending the purchase of a *second-hand life policy*, a firm may provide a *private customer* with the following information in place of *key features* (in accordance with COB 6.4.14 R):
- (1) the name of the *life office*;
 - (2) whether it is incorporated or unincorporated;
 - (3) that its head office is in the *United Kingdom* or, if it is elsewhere, the name of the *Member State* or other state in which it is situated, and, if the *life policy* is to be made with a *branch* of the *life office*, the name of the state in which that *branch* is situated;
 - (4) the address of the head office and, where appropriate, the *branch* in question;
 - (5) a definitive statement of each benefit and each option under the *policy*;
 - (6) the term of the *life policy*;
 - (7) how the *life policy* may be terminated;
 - (8) how *premiums* are payable and for how long a period or periods;
 - (9) how bonuses are calculated and distributed;
 - (10) an indication of surrender and paid-up values;
 - (11) information on *premiums* for each benefit, both main benefits and supplementary benefits where appropriate;
 - (12) where the *life policy* is *unit-linked*, a definitive description of the *units* to which the benefits are linked;
 - (13) the arrangements for application of the right to cancel;
 - (14) general information on the tax arrangements that apply to the type of *life policy* in question;
 - (15) the applicable arrangements for handling complaints about *life policies* by policyholders, lives assured or beneficiaries under the *life policy*, including, where appropriate, a statement that there is a complaints body in addition to the right to take legal proceedings; and

(16) the law that is, or will be, applicable to the *life policy*.

BROKER FUNDS

- 6.5.32 R In relation to any fund or *scheme* of which the *firm* is a *broker fund adviser*, at the same time as providing a *private customer* with a reason why letter (as in COB 5.2) or before any change in investment objectives or strategies, the *firm* must inform the *private customer* in writing of:
- (1) the investment objectives, and the *policies* and strategies which are proposed to be followed to achieve those objectives;
 - (2) the relevant published index or other indicator with which comparison of the performance of the fund or *scheme* may fairly be made, which is, in the case of:
 - (a) *life policies* or pension funds;
 - (i) where the *life office* has its own managed *unit-linked* life or pension fund, the average performance of that managed fund; or
 - (ii) the average performance of one or more other funds, which are not *broker funds*, into which under the terms of the *policy* the *private customer* may switch, the objectives of which do not conflict with those of the *broker fund*; or
 - (iii) where there is no such fund, the sector average of general managed life or pension funds;
 - (b) *broker unit trusts*, the sector average of *unit trusts* appropriate to the objectives and strategy of the *broker unit trust*;
 - (3) a published index or sector average which the *firm* must identify as appropriate to the investment objectives and strategy of the fund or *scheme* under comparison; and
 - (4) the name of any *person* providing *advice* under the arrangement.

Other Information

POST-SALE CONFIRMATION - LIFE POLICIES

- 6.5.33 R The post-sale confirmation to be given to *private customers* in accordance with COB 6.3.2 R must include:

- (1) the information required by *COB* 6.5.7- 6.5.10 (an Example), 6.5.14- 6.5.18 (Tables and Deductions Summary) and 6.5.26 R (*Commission and Remuneration*);
- (2) where the investment has been recommended to a *private customer* by a *representative*, a statement under the heading 'ADVISER'S STATUS' that:

'The person who advised you about this policy represents only [Name of Firm [or, if appropriate, marketing group.]'.

THIRD LIFE DIRECTIVE ANNEX II - 'INFORMATION FOR POLICYHOLDERS'

- 6.5.34 R (1) A *firm* to which *COB* 6.5.28(1)(b) R applies must communicate in writing the information prescribed in Table 6.5(4) R to the policyholder, before the *policy* is concluded in an official language of the *Member State* of the commitment.
- (2) This information may be in another language if the policyholder so requests, and the law of the *Member State* so permits or the policyholder is free to choose the law applicable.

6.5.35 G The headings and other wordings within Table 6.5.(4) R follow those used in the European Directives.

Table 6.5 (4)R THIRD LIFE DIRECTIVE ANNEX II TABLE OF 'INFORMATION FOR POLICYHOLDERS'

Information about the assurance undertaking	Information about the commitment
1. The name of the undertaking and its legal form	4. Definition of each benefit and each option
2. The name of the <i>Member State</i> in which the head office and, where appropriate, the agency or <i>branch</i> concluding the <i>policy</i> is situated	5. Term of the <i>policy</i>
3. The address of the head office and, where appropriate, of the agency or <i>branch</i> concluding the <i>policy</i>	6. Means of terminating the <i>policy</i>
	7. Means of payment of <i>premiums</i> and duration of payments

	8. Means of calculation and distribution of bonuses
	9. Indication of surrender and paid-up values and the extent to which they are guaranteed
	10. Information on the <i>premiums</i> for each benefit, both main benefits and supplementary benefits, where appropriate
	11. For <i>unit-linked policies</i>, definition of the <i>units</i> to which the benefits are linked
	12. Indication of the nature of the underlying assets for <i>unit-linked policies</i>
	13. Arrangements for application of the right to cancel
	14. General information on the tax arrangements applicable to the type of <i>policy</i>
	15. The arrangements for handling complaints concerning <i>policies</i> by policyholders, lives assured or beneficiaries under <i>policies</i>, including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings
	16. Law applicable to the <i>policy</i> where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the <i>life office</i> proposes to choose.

6.6 Projections

APPLICATION

- 6.6.1 R This section applies to a *firm* which provides ***projections*** in respect of ***life policies, schemes and stakeholder pension schemes***.

PURPOSE

- 6.6.2 G This section amplifies *Principle 7* which requires a *firm* to pay due regard to the information needs of its *customers*, and *communicate* information to them in a way which is clear, fair and not misleading. A *projection* needs to be carried out on a basis of uniform and consistent rates of investment return so that *firms* do not seek to compete on the basis of wholly speculative forecasts as to the potential value of future benefits. This should ensure that *private customers* purchasing a *life policy, scheme or stakeholder pension scheme* receive information about possible future returns from their investment in a way which is fair and not misleading.

CONTENT

- 6.6.3 G This section sets out:
- (1) when these *rules* apply (COB 6.6.4-6.6.7);
 - (2) the information and statements to accompany *projections* (COB 6.6.8 –6.6.14);
 - (3) what records must be kept of *projections* issued to *customers* (COB 6.6.15R);
 - (4) the method of calculating a *projection* (COB 6.6.16-6.6.45);
 - (5) the method of calculating the effect of deductions (the reduction in yield) which must be included within a *projection* (COB 6.6.46-6.6.54);
 - (6) the suggested method of calculating *charges* and expenses relating to *schemes* (COB 6.6.55-6.6.70);
 - (7) assumptions to be used when converting a *retirement fund* into an annuity (COB 6.6.71-6.6.75); and
 - (8) how to produce a *pension transfer value analysis* (COB 6.6.76-6.6.82).

GENERAL

- 6.6.4 R A *firm* must not provide a ***projection*** for a ***life policy, scheme or stakeholder pension scheme*** unless the ***projection*** is calculated and presented in accordance with the *rules* in this section (COB 6.6) or COB 6.6.5 R applies.
- 6.6.5 R The *rules* in this section (COB 6.6) do not apply to a *firm* in respect of a ***projection***:
- (1) of the benefits payable under a ***defined benefit occupational pension scheme*** unless they are ***money-purchase benefits***;

- (2) issued with a view to determining a maximum contribution allowed by the Inland Revenue, provided the assumptions used in calculating such a contribution are disclosed;
- (3) if all benefits are fixed and do not depend on an assumption of a future investment return;
- (4) of a benefit under an existing contract where the date to which the benefit is being projected is not more than six months after the date on which the *projection* is given.
- (5) contained in a decision tree as set out at [Table 6.5(1)A]R
- (6) of the benefits payable under a money-purchase pension scheme or arrangement if they were calculated and issued in accordance with regulations made under section 113 of the Pensions Schemes Act 1993.

HIGHER VOLATILITY FUNDS

- 6.6.6 R A *firm* must not provide a *projection* of possible investment returns or realisable values, or figures or statements which would enable the calculation of such a *projection*, for an investment in a *higher volatility fund*.

PROJECTIONS ISSUED BY INDEPENDENT INTERMEDIARIES

- 6.6.7 R An *independent intermediary* must ensure that a *projection* given to a particular *customer* is relevant to that *customer's* circumstances.

INFORMATION TO ACCOMPANY PROJECTIONS

- 6.6.8 R (1) A document containing a *projection* must include the information detailed in COB 6.8 (*key features*) under the headings 'An Example', 'Tables', 'Deductions Summary' and 'Commission and Remuneration' unless (2) applies.
- (2) The information under the headings 'Tables', 'Deductions Summary' and 'Commission and Remuneration' need not be included in a *projection* issued in respect of:
- (a) existing contracts;
 - (b) *financial promotions* (other than *direct offer financial promotions*); or
 - (c) *execution-only transactions* relating to *schemes*.

- (3) If the *projection* relates to a contract to which regular *premiums* or contributions can be made, the total amount or number of *premiums* or contributions payable over the *projection* term must be made clear.
 - (4) Where a *projection* is given which makes allowance for increases in *premiums* or contributions, the *premium* or contribution in the final year must be shown (or, where the rate of possible future increments is based upon rates of growth in a salary or index, details of that salary or index).
- 6.6.9 R (1) A *firm* may provide a generic *projection* for illustrative purposes based on a single rate of investment return in the following circumstances:
- (a) within a *financial promotion* (other than a *direct offer financial promotion*) which comprises a table (or extracts from a table) published by a newspaper, magazine or other periodical publication or by the *firm* itself which compares illustrative *projections* from at least five *product providers*;
 - (b) where the purpose is to indicate the likely cost of a proposed transaction; or
 - (c) to provide an estimate of the additional *premium* or contribution required to achieve a specified target.
- (2) A *firm* which issues a generic *projection* must ensure that:
- (a) it does not relate to an existing contract;
 - (b) the rate of return used does not exceed the higher *projection* rate for its class of business;
 - (c) where the rate used exceeds the middle rate by more than 0.5% a statement is included advising why it is believed reasonable to assume such a high rate of return;
 - (d) where the *charges* and expenses (as defined in COB 6.6.19 R) of the *product provider* are available, they are used, or an estimate is given based on the *firm's* knowledge of the *charges* and expenses applicable to similar contracts;
 - (e) it is accompanied by the written statements contained in Table 6.6 (2)R; and
 - (f) *key features* are supplied in accordance with COB 6.1 to 6.5 (*key features*) if a recommendation is subsequently made.

- 6.6.10 R For pension targeting, a *firm's* own assumptions as to future investment returns, salary increases and inflation must be used to determine the level of *premiums*. Any allowance for salary increases used in pension targeting must not be less than the investment return assumed prior to retirement less 3% per annum.
- 6.6.11 R A *projection* for an *appropriate personal pension* must, for the purpose of comparison, include a *projection* which:
- (1) is calculated to the *customer's* State retirement age using real rates of return of x% and y% ('x' and 'y' are the real rates of return referred to in COB 6.6.44 R) showing the benefits which the minimum contributions would secure if the *customer* did not take out an *appropriate personal pension*;
 - (2) includes, immediately after the comparison, the statement: 'These figures are only meant to give you a rough idea how the value of the pension you might get compares with the benefit you would be giving up under the State Earnings Related *Pension scheme*. The statements made after the main *illustration* also apply to this comparison.';
 - (3) aggregates contributions in respect of the current and the next two tax years;
 - (4) is followed by the *appropriate personal pension projection* preceded by a description of any differences in:
 - (a) presentation eg real or monetary rates of return, joint or single life;
 - (b) the dates from which the benefits are assumed to be payable;
 - (c) the nature of the benefits, eg index-linked or limited price indexation ('LPI') increases.
- 6.6.12 R A *projection* for a personal pension or stakeholder pension scheme with *income withdrawals*:
- (1) must include:
 - (a) a statement of the initial amounts of minimum and maximum income as specified in the current tables published by the Government Actuary for *income withdrawals*;
 - (b) a statement of the assumed initial level of income and the assumed basis for future years;

- (c) a schedule showing under the heading 'WHAT THE BENEFITS MIGHT BE' the amount of income and the fund at each, or every third, anniversary for each of the rates of return specified in COB 6.6.44 R;
 - (d) a statement of the projected open market values and the amounts of annuity at age 75 or the date at which it is reasonably assumed an annuity will be purchased; and
 - (e) a statement of the amount of annuity that could be secured using an immediate annuity rate available in the market; and
- (2) must assume that the current rate of gilt-index yield will continue to apply in projecting amounts of minimum and maximum income throughout the term of the *projection*.

STATEMENTS TO ACCOMPANY PROJECTIONS

- 6.6.13 R (1) A document containing a *projection* must include the appropriate statements set out in Tables 6.6 (1)R –6.6 (3)R.
- (2) A statement may be altered if a *firm* believes on reasonable grounds that it is not wholly appropriate to the contract in question. But the alteration must not reduce the significance or impact of the statement.
- (3) Any statement required to accompany a *projection* must appear immediately after the projected values and be in a type size no smaller or less prominent than that used for the projected values.
- 6.6.14 R The statements in Table 6.6 (1)R must accompany each *projection* for a *life policy* or *scheme* as indicated except a generic *projection* (see Table 6.6 (2)R) or a protected rights annuity *projection* (see Table 6.6 (3)R).

Table
6.6(1)R

STATEMENTS TO ACCOMPANY PROJECTIONS OF LIFE POLICIES, SCHEMES <u>OR</u> STAKEHOLDER PENSION SCHEMES (EXCLUDING GENERIC PROJECTIONS AND PROTECTED RIGHTS ANNUITY PROJECTIONS)
<p>1. These figures are only examples and are not guaranteed – they are not minimum or maximum amounts. What you will get back depends on how your investment grows and on the tax treatment of the investment.</p>
<p>2. [You could get back][your retirement fund could be] more or less than this.</p>
<p>3. All firms use the same rates of growth for projections but their charges vary. [They also use the same rates to show how funds may be converted into pension income].</p>
<p>4. Do not forget that inflation would reduce what you could buy in the future with the amounts shown.</p>
<p>5. [Your pension income will depend on how your investment grows and on interest rates at the time you retire].</p>
<p>6. These rates of return are not necessarily appropriate [for contracts written in] [for units traded in] [for shares traded in] currencies other than sterling.</p>
<p>7. Benefits may also be affected by fluctuations in exchange rates.</p>
<p>Note: Statement 5 applies to <i>pension contracts</i> only and statements 6 and 7 apply to non-sterling investments only.</p>

Table
6.6(2)R

STATEMENTS TO ACCOMPANY GENERIC PROJECTIONS
<p>1. These figures are only illustrative.</p>
<p>2. An assessment of your needs will be confirmed before a recommendation can be made OR Your needs will be confirmed before a recommendation can be made.</p>
<p>3. Key features, including a projection which is personal to your circumstances, will be provided if a recommendation for an investment product is made.</p>

Table
6.6(3)R

STATEMENTS TO ACCOMPANY PROJECTIONS FOR PROTECTED RIGHTS CONTRACTS
<ol style="list-style-type: none">1. These figures are only meant to give you a rough idea of the amount of pension you might get compared with the benefit that you would be giving up under the State Earnings Related Pension scheme.2. The figures show what might happen if we achieved an investment return of [x%] or [y%] each year on top of the rate of earnings inflation.3. They are only examples and are not guaranteed – they are not minimum or maximum amounts. What you will get back depends on how your investment grows.
<ol style="list-style-type: none">4. You could get back more or less than this.5. All firms use the same rates of growth for projections but their charges vary. They also use the same rates to illustrate how funds may be converted into pension income.6. Your pension income will depend on how your investment grows and interest rates at the time you retire. <p>Note: [x%] and [y%] in 2 are the rates of real investment return used in the <i>projection</i> as published by FSA from time to time.</p>

RECORDS

- 6.6.15 R A *firm* must ensure that a record of a *projection* provided to a *customer* is retained for at least six years, unless it relates to a **proposal which does not proceed**. The record should be retained for a minimum period of:
- (1) 6 years in the case of a record relevant to a *life policy, pension contract or stakeholder pension scheme*;
 - (2) Indefinitely in the case of a record relevant to a *pension transfer or pension opt-out*;
 - (3) 3 years in any other case.

The calculation of a projection

CONTENT

- 6.6.16 G COB 6.6.17-6.6.44 set out:
- (1) definitions of key terms used in the calculation of a *projection* (COB 6.6.17 R);
 - (2) the basic approach to be used when calculating a *projection* for *life policies* (COB 6.6.30 R), *Holloway sickness policies* (COB 6.6.31 R) and *schemes* (COB 6.6.32 R) and stakeholder pension schemes (COB 6.6.30R);
 - (3) principles which must be taken into account when calculating a *projection* including general principles which may apply to all *life policies schemes and stakeholder pension schemes* (COB 6.6.33-6.6.34) and specific principles applicable to certain types of *product* or features within a *product* (COB 6.6.35-6.6.43);
 - (4) tables containing the rates of return to be used when calculating a *projection* depending on the type of contract being projected (COB 6.6.44 R).

Key terms used in the calculation of a projection

- 6.6.17 R The descriptions of defined terms in COB 6.6.18 apply to all references to those terms in COB 6.6.30- 6.6.70 which detail the method of calculating *projections* and of calculating *charges* and *expenses* and the recommended method of calculating *scheme expenses*.

ADJUSTED PREMIUM

- 6.6.18 R (1) The adjusted *premium* is the *premium* or contribution payable under the contract during the contract period (defined in COB 6.6.21 R), disregarding any increases that cannot be quantified at the commencement of the contract (but allowing for any increases which are assumed and disclosed in the *key features*).
- (2) When calculating the amount of *premium* or contribution, a *firm* may deduct:
- (a) The cost of any rider benefits;
 - (b) Any part of a *premium* or contribution which is payable in respect of an exceptional mortality risk.

CHARGES AND EXPENSES

- R (1) For a *scheme* or *unit-linked life policy*, *charges* and *expenses* are all explicit *charges* and *expenses* the *customer* will or may bear:
- (a) Including:

- (i) all other deductions and expenses which will or may bear upon the fund (including *charges* in respect of any *collective investment scheme* or insurance fund in which any funds of the contract in question are invested); and
 - (ii) all deductions from the *premium* or contribution payable which do not accrue to the benefit of the *customer* by way of contribution to the value of the benefit.
- (b) Having regard to:
- (i) the principal terms of the contract; and
 - (ii) any tax relief which will be available to the *firm* in respect of so much of the *firm's* gross expenses as can be properly attributed to the contract.
- (2) For a with-profits contract, or a *unit-linked life policy* where not all *charges* and expenses are determined in accordance with (1), *charges* and expenses are such expenses as the *firm* reasonably determines to be appropriate to the contract having regard to:
- (a) The principal terms of the contract;
 - (b) Any tax relief which will be available to the *firm* in respect of so much of the *firm's* gross expenses as can properly be attributed to the contract;
 - (c) Any transfers to shareholders' funds, or equivalent retentions from established surplus offset by any sustainable rate of transfer of surplus from non-profit business; and
 - (d) Any guidance published by the Institute of Actuaries or the Faculty of Actuaries (or by both jointly).
- (3) If a contract has explicit *charges*, it should be assumed that they continue at a rate no less than that at which similar *charges* are being made at the time when the *projection* or calculation of the effect of the *charges* is made.

6.6.20 G For the calculation of the effect of deductions in *projections*, *charges* are all explicit *charges* adjusted for tax as in COB 6.6.19 R(2)(b) and expenses are all other deductions. For stakeholder pension schemes, charges are all explicit charges and expenses for the underlying policy or contract including any charges levied by the manager or trustees of the stakeholder pension scheme.

CONTRACT PERIOD

6.6.21 R The contract period of a *life policy, scheme or stakeholder pension scheme* is the period beginning with the commencement of the contract and ending as follows:

- (1) for a contract which contains an *option* under which benefits may be:
 - (a) payable earlier than the date on which they would be payable if the *option* were not exercised; and
 - (b) the marketing of which seeks to draw to the attention of *customers* the existence of an *option* or *surrender value*, so that it is reasonable to infer that the *firm* expects some *customers* to purchase the contract with the intention of exercising the *option* or surrendering the contract in whole or in part;

on the earliest date on which an *option* may be exercised or the contract may be surrendered (in whole or in part);

- (2) for a contract which is a *whole life assurance* the *premiums* under which are regular *premiums*:
 - (a) the anniversary of the commencement of the contract which first falls after the seventy-fifth birthday of the *person* whose life is assured under the contract, taking, if there are two or more such *persons*:
 - (i) the older or oldest if the benefits under the contract are payable on the death of the first of them to die; and
 - (ii) the younger or youngest in any other case; or
 - (b) the tenth anniversary of the commencement of the contract;

Whichever is the later;

- (3) in the case of an *endowment assurance* or a non-pension deferred annuity, the *premiums* under which are regular *premiums*, on the maturity date;
- (4) in the case of an *endowment assurance* or a non-pension deferred annuity under which the only *premium* payable is a single *premium* and the term of which does not exceed 10 years, on the maturity date;
- (5) in the case of a *Holloway sickness policy*, on the latest date on which the sickness benefit will cease to be payable;

- (6) in the case of a *pension contract* other than an immediate annuity, on the maturity date or, if the contract provides for annuities at various dates, the latest date at which an annuity may be purchased;
- (7) in the case of an immediate annuity, on the date to which the *customer* is expected to live, calculating the expectancy of life for this purpose by reference to an appropriate mortality basis; and
- (8) for the purpose of this section “maturity date” means:
 - (a) in relation to an endowment type assurance, the date specified in the contract as the maturity date;
 - (b) in relation to a *pension contract* or *stakeholder pension scheme*, the vesting date of the annuity payable under the contract or, if no vesting date for the annuity is specified in the contract, the date specified in relation to the annuity as the retirement date by the *firm* in the *projection* in question, being a date not earlier than the earliest date on which the annuity could vest and not later than the latest such date.

6.6.22 R In the case of any contract which falls within both 6.6.21 R(1) and one or more of 6.6.21 R(2) - (7), the contract period must be determined by reference to 6.6.21 R(1).

6.6.23 R In the case of any contract not falling within COB 6.6.21 R, then:

- (1) for *schemes*, the contract period will end on the tenth anniversary of the commencement date of the contract; and
- (2) for all other contracts there will be two contract periods, the first ending on the fifth anniversary of the commencement date of the contract, and the second ending on the tenth anniversary of the commencement date.

COST OF RISK BENEFITS

6.6.24 R Cost of risk benefits means:

- (1) explicit mortality or morbidity *charges* (at a level no lower than the current level); or
- (2) the implicit cost or effect of mortality or morbidity appropriate to the class of *customers*;

And risk benefits means all forms of mortality and sickness benefits under a contract.

RELEVANT CONTRIBUTION

- 6.6.25 R The relevant contribution is the actual payment or payments to be made by the *customer*, or a sum which reasonably reflects the amounts which the *customer* is proposing to invest, into a *scheme*, except in the case of a protected rights annuity (see COB 6.6.27 R).

RELEVANT PREMIUM

- 6.6.26 R The relevant *premium* is the actual *premium* payable under a *life policy* less an amount equal to the cost of any rider benefit, except in the case of a protected rights annuity (see COB 6.6.27 R).

RELEVANT PREMIUM OR CONTRIBUTION FOR PROTECTED RIGHTS ANNUITIES

- 6.6.27 R The relevant *premium* or contribution in relation to a protected rights annuity is an amount that may reasonably be estimated to be paid by the Secretary of State or the Department of Social Services for Northern Ireland by way of minimum contributions in respect of the *customer* involved.

- 6.6.28 G The relevant *premium* or contribution may include amounts in respect of minimum contributions expected to be paid in future years. This applies if the estimate for those years makes allowance for the most recent assumptions published by the Government Actuary in respect of the future years, and these assumptions and the period of any *projection* are made clear.

RELEVANT RATE OF RETURN

- 6.6.29 R The relevant rate of return is the intermediate *projection rate* appropriate to the category of business as set out in Tables 6.6 (5)R – 6.6 (7)R, or the lower rate if COB 6.6.34 R(1) (*projections of surrender values* and transfer values) applies.

Basic calculation method

LIFE POLICY OR STAKEHOLDER PENSION SCHEME CALCULATION

- 6.6.30 R (1) A *projection* of any future benefit payable under a *life policy* or *stakeholder pension scheme* must be calculated by reference to the relevant *premium* for the *policy* or *stakeholder pension scheme*.
- (2) The relevant *premium* must be accumulated to the *projection date* at the rate of return for its class of business as detailed in Tables 6.6 (5)R – 6.6 (7)R subject to *charges* and expenses (as defined in COB 6.6.19 R) and the cost of risk benefits.
- (3) An allowance must be made where a *customer* has exercised or has expressed the intention to exercise an *option* to effect a partial surrender of a *policy*.

- (4) Allowance must not be made for *income withdrawals*, surrenders, lapses or early discontinuance except as in (3).**

HOLLOWAY SICKNESS POLICY CALCULATION

- 6.6.31 R For a *Holloway sickness policy* issued by a *friendly society*, a rate of bonus no greater than that last declared by the *friendly society* must be accumulated with allowance for applicable *charges* and expenses (as defined in COB 6.6.19 R) at the rates of return set out in Table 6.6(5)R until the *projection date*.

SCHEME CALCULATION

- 6.6.32 R (1) A *projection* of any future benefit payable under a *scheme* must be calculated by reference to the relevant contribution for the *scheme*.
- (2) The relevant contribution must be accumulated to the *projection date* at the rates of return for its class of business as detailed in Table 6.6 (5)R subject to *charges* and expenses (as defined in COB 6.6.19 R).
- (3) An allowance must be made where a *customer* has exercised or expressed the intention to exercise an *option* under the *scheme* to make withdrawals, either by:
- (a) Encashment of *units*; or
 - (b) Distribution of income; this must be calculated using an estimated gross distribution yield, reduced by the rate of tax relevant to the contract; the distribution yield must be rounded to the higher 0.1%.
- (4) No allowance must be made for the distribution of income except as in (3).

General Rules applicable to the calculation of projections

- 6.6.33 R (1) A *projection* must be rounded down to not more than three significant figures.
- (2) Where the *projection*, other than a *projection* in real terms of a *pension contract* or *stakeholder pension scheme*, is less than the amount guaranteed under the *life policy* or *scheme*, the *projection* must be increased to that guaranteed amount.
- (3) Where a *customer* is entitled, and has expressed the intention, to increase the *premium* or contribution by an amount linked to future salary or other index increases, the relevant *premium* or contribution may be calculated by making allowance for such increases on the same basis as that used for administration *charges* in Table 6.6 (4)R.

- (4) A *projection* issued within one year of the commencement date of a contract may be calculated as if it is being given at that commencement date provided that any alteration in the contract terms requested by the *customer* is taken into account.

PROJECTIONS OF SURRENDER VALUES AND TRANSFER VALUES

6.6.34 R A *projection* of a surrender or transfer value:

- (1) must be given using the intermediate rate of return appropriate to its category of business unless:
 - (a) the *firm* reasonably expects the rate to overstate the potential of the contract in which case a lower rate of return must be used and disclosed; or
 - (b) the *customer* so requests in which case a lower rate of return may be used, and the fact that it has been used must be disclosed;
- (2) must make allowance for partial surrenders of a contract where the contract terms permit this and the *customer* has exercised this *option* or expressed the intention to do so;
- (3) must allow for the *firm's surrender value* basis and reflect the current approach of the *firm* towards applying penalties on surrender, including less than full credit for accrued terminal bonus, specific penalties or *exit charges*; and
- (4) for a with-profits contract where bonus rates apply, must ensure that the bonus rates supported by the relevant *premium* are assumed to apply throughout the term of the contract.

Rules specific to products or features of products

ANNUITIES

- 6.6.35 R
- (1) Any *projection* of an annuity with one or more years to maturity must show an annuity value based on the higher and lower rates of return as set out in Tables 6.6 (5)R –6.6 (7)R and make allowance for:
 - (a) mortality and also in the case of *life policies*, morbidity appropriate to the class of *customers*; and
 - (b) *charges* and expenses (as defined in COB 6.6.19 R).
 - (2) Any *projection* of an annuity with less than one year to maturity must be calculated using annuity rates no more favourable than the *firm's* current immediate annuity rates.

- (3) Where a *firm* which does not offer annuities issues a *projection* for a contract the proceeds of which are to be applied to the purchase of an annuity, the *firm* must use annuity rates no more favourable than those currently being used in the open market for such a *projection*.

6.6.36 R In the case of a contract for an immediate annuity:

- (1) the uniform rate of continuous change in annuity supported by the actual *premium* to be paid must be determined for each rate of return with allowance for:
- (a) mortality appropriate to the class of *customer*; and
 - (b) *charges* and expenses (as defined in COB 6.6.19 R) on the assumptions used when calculating the *firm's* own annuity rates.
- (2) the rate of continuous change in annuity calculated must then be:
- (a) applied to the initial annuity under the contract which is the subject of the *projection*; and
 - (b) assumed to be maintained throughout the term of the contract.

APPROPRIATE PERSONAL PENSIONS AND PROTECTED RIGHTS ANNUITIES

- 6.6.37 R (1) The *retirement fund* for a protected rights annuity under an *appropriate personal pension scheme or stakeholder pension scheme* must be calculated by accumulating the relevant contribution less *charges* and expenses (as defined in COB 6.6.19 R) at the two relevant rates of return for the period.
- (a) The period is either:
- (i) where the relevant contribution is a minimum contribution, from the 1st September following the end of the tax year to which the minimum contribution relates up to the maturity date; or
 - (ii) where the relevant contribution is a transfer value, from the commencement of the contract up to the maturity date.
- (b) The two relevant rates of return are as follows.
- (i) In the case of a protected rights annuity *projection* issued in accordance with COB 6.6.11 R(1), the real rate of return in Table 6.6 (7)R must be used.

(ii) In the case of any other protected rights annuity *projection*, either the real or monetary lower and higher rates of return in Table 6.6 (7)R must be used.

(2) The annuity must be calculated by reference to the *retirement fund* using the higher and lower rates of return set out in Table 0 (6)R with allowance for the mortality appropriate to the class of *customers*, *charges* and expenses and the relevant rate of increase in payment.

PENSION CONTRACTS OR STAKEHOLDER PENSION SCHEMES

- 6.6.38 R (1) An additional *projection* may be given for a *pension contract* or stakeholder pension scheme where the period to maturity is five years or less. This:
- (a) may be calculated using the intermediate rates of return specified in Table 6.6 (6)R;
 - (b) may use a current annuity rate calculated using a rate of return no higher than the higher rate specified in Table 6.6 (6)R.
- (2) If the *firm* providing the *projection* offers annuities, it must use its own annuity rates.

SINGLE PREMIUM CONTRACTS

- 6.6.39 R A *projection* relating to a single *premium* contract (other than a protected rights annuity) may be a calculation set out as if those *premiums* were regular *premiums* provided:-
- (1) it is not otherwise given on a misleading basis;
 - (2) the *firm* is bound unconditionally, and by express terms of the contract, to accept all single *premiums* which may be paid by the *customer* under the contract.

WITH-PROFITS ENDOWMENT BUSINESS

- 6.6.40 R For with-profit *endowment assurance* where the amount of any guaranteed benefit payable on death is not calculated by reference to the total value of the *premiums* paid under the contract before that event:
- (1) the cost of risk benefits must allow for the bonus rate or rates supported by the relevant *premium* (given the basic sum assured for such a *policy* with an appropriate office *premium*) calculated for each rate of return; and

- (2) the rate or rates of bonus must then be applied under the *policy* which is the subject of the *projection* and be assumed to be maintained throughout the term of the *policy*.

WITH-PROFITS WHOLE LIFE ASSURANCE BUSINESS

R For with-profit whole life assurance other than a *policy* the bonuses under which are added to the *surrender value*:

- (1) the cost of risk benefits must allow for the bonus rate or rates supported by the *premium* (given the basic sum assured for such a *policy* with an appropriate office *premium*) calculated for each rate of return; and
- (2) the rate or rates of bonus must then be applied under the *policy* which is the subject of the *projection* and be assumed to be maintained throughout the term of the *policy*.

CONTRACTS WITH REVIEWABLE ADMINISTRATION CHARGES

6.6.42 R In respect of *policies* with reviewable administration *charges*:

- (1) a *firm* must make allowance for increases in administration *charges* which are reviewable at the *firm's* discretion, on a basis which:
 - (a) is fair and reasonable; and
 - (b) takes into account the *firm's* pricing policy as regards future levels of administration *charges*:
- (2) Increases must be assumed at the rates in Table 6.6 (4)R for any contracts where:
 - (a) an administration *charge* is reviewable by the *firm* (whether or not any increases are contractually linked to an external index); or
 - (b) expenses in respect of future renewal or claims costs are expressed as monetary amounts.

Table 6.6(4)R TABLE OF ASSUMED RATES OF INCREASE FOR POLICIES WITH REVIEWABLE ADMINISTRATION CHARGES

Basis of review	Assumed rate of increase		
	Lower rate of return	Intermediate rate of return	Higher rate of return
Administration <i>charge</i> reviewed in line with price increases	0.5%	2.5%	4.5%
Administration <i>charge</i> reviewed in line with earnings increases	2%	4%	6%

CONTRACTS WITH RIDER BENEFITS AND/OR EXTRA PREMIUMS ADDED FOR UNDERWRITING RISKS

- 6.6.43 R** In respect of a contract with rider benefits or where an extra *premium* is being charged for an increased underwriting risk:
- (1) the rider benefit or extra *premium* charged for an impaired life, hazardous pursuit, or on the grounds of occupation, must be taken into account when determining a *projection*;
 - (2) if a deduction is made from the actual *premium* for a rider benefit or increased underwriting risk (or both), the sum of the amounts of the relevant *premium* must be quoted with the *projection*; and
 - (3) for *policies* with rider benefits a *firm* may apply the following procedure:
 - (a) if the *policy* is also available without the rider benefit then the same values must be projected as would be projected for such a *policy* with the *premium* appropriately reduced; and
 - (b) if the contract is available only with one or more rider benefits the *firm* must deduct a fair estimate of the cost of the extra benefits from the *premium* when determining the *projection*; if a fair estimate cannot be made a rough estimate (rounded to the next higher 10% of the total *premium* payable by the policyholder) must be deducted.

Rate of return assumptions

- 6.6.44 R** The appropriate rates of return for the type of contract being projected, taken from Tables 6.6 (5)R – 6.6 (7)R, must be used when calculating a *projection*.

- (1) Lower rates of return must be used if the *firm* expects the rates in the tables to overstate the investment potential of a contract.
- (2) Lower rates of return may be used if requested by a *customer*.
- (3) Whenever lower rates are used they must be disclosed in the document containing the *projection*.

Table 6.6(5)R

Rate of return assumptions for all schemes, ordinary branch non-pensions, industrial branch, friendly society, immediate annuity and Holloway sickness policies (all monetary rates of return).			
	Lower rate	Intermediate rate	Higher rate
a) Non tax-exempt business relating to <i>schemes</i> , ordinary <i>branch</i> non-pensions and industrial <i>branch</i> business	4%	6%	8%
b) Holloway sickness <i>policies</i>			
c) Tax-exempt business held within an <i>ISA/PEP</i> or by a <i>friendly society</i> , relating to <i>schemes</i> , ordinary <i>branch</i> non-pensions and industrial <i>branch</i> business	5%	7%	9%
d) immediate annuities			
Note: In relation to <i>schemes</i> : <ul style="list-style-type: none"> ▪ The monetary rates of return above include any distribution of income. ▪ The rates of return may be used for contracts for [<i>units</i>][<i>shares</i>] denominated in currencies other than sterling unless it is expected they will overstate the investment potential of the contract. 			

Table 6.6(6)R

Rate of return assumptions for pension contracts and stakeholder pension schemes excluding contracts for immediate annuities and protected rights annuities issued in accordance with COB 6.6.11 R(1)			
a) in deferment – either monetary or real rates of return may be provided			
	Lower rate	Intermediate rate	Higher rate
Monetary rates of return	5%	7%	9%
Real rates of return	1%	N/A	3%

b) after vesting – (monetary or real rates as used for period of deferment under a) above)			
	Lower rate	Intermediate rate	Higher rate
Monetary rates of return	4%	6%	8%
For annuities linked to the retail price index	2%	3%	4%
For annuities linked to LPI (limited price indexation)	2%	3.5%	5%

Table 6.6(7)R

Rate of return assumptions for protected rights annuity projections given in accordance with COB 6.6.11 R(1)			
	Lower rate	Intermediate rate	Higher rate
In deferment: - for periods in excess of five years - real rates of return	1%	N/A	3%
In deferment: - for periods of five years or less - monetary rates of return	5%	7%	9%
After vesting: - for annuities linked to the retail prices index	2%	3%	4%

- 6.6.45 G The rates of return in Tables 6.6 (5)R –6.6 (7)R are assumed to compound annually and allow for inflation.

Calculation of the reduction in yield due to the effect of charges and expenses

CONTENT

- 6.6.46 R **COB 6.6.47- 6.6.54 sets out the *rules* to be used when calculating the effect of deductions (the ‘reduction in yield’) to be provided within *key features* (COB 6.8) for all types of *life policies* and *schemes*. COB 6.6.55- 6.6.70 provide *guidance* in assessing the expenses and *charges* relating to *schemes*.**

BASIC CALCULATION METHOD OF THE REDUCTION IN YIELD

- 6.6.47 R (1) **A *firm* must accumulate the adjusted *premium* to the end of the contract period at the relevant rate of return making:**

- (a) full allowance for the *charges* and expenses (as defined in COB 6.6.19 R); and
 - (b) no allowance for *charges* and expenses.
- (2) Then calculate the rate of return which, if applied (on an annual compound basis) to the adjusted *premium* over the contract period, without making any allowance for the *charges* and expenses, will produce the same sum as that calculated under (1)(a).
- (3) The reduction in yield is the difference between the relevant rate of return and the rate of return found in (2).
- R (1) When a *firm* is calculating a *projection*, *charges* which relate to benefits for any mortality or morbidity risks, or a proportion of them, must be assumed not to be made:
- (a) providing the assumption does not produce figures for the effect of *charges* deductions which suggest that the *charges* under the contract are lower than they actually are; and
 - (b) only in so far as they are attributable solely to benefits for mortality or morbidity risks, a proper apportionment being made of any composite *charges*.
- (2) Where a *charge* cannot be apportioned, (1) will not apply. The *firm* may include in the information required to be given within a *projection* a statement to the effect that the reductions have been calculated without disregarding *charges* relating to benefits for any mortality or morbidity risks.

ALTERNATIVE CALCULATION METHOD OF THE REDUCTION IN YIELD FOR A LIFE POLICY

- 6.6.49 R The following alternative method of calculation of the reduction in yield may be used at a *firm's* discretion for a *life policy*:
- (1) The adjusted *premium* should be accumulated to the end of the contract period at the relevant rate of return making full allowance for the *charges* and expenses (as defined in COB 6.6.19 R).
 - (2) If the accumulated value will reach zero before the end of the contract period, the accumulation should cease at that stage; subsequent references in this *rule* to the contract period should be taken where relevant as referring to that shorter calculation period.

- (3) In making this calculation, the total of all *charges* and expenses not solely attributable to the risk benefits should be assessed separately and accumulated to the end of the contract period at the relevant rate of return.
- (4) The adjusted *premium* should be accumulated to the end of the contract period at the relevant rate of return making no allowance for *charges* and expenses.
- (5) The reduction in yield should be calculated in accordance with COB 6.6.47 R but using the shorter calculation period specified in (1) above, if applicable.

OTHER PROVISIONS

- 6.6.50 R In the case of a protected rights annuity the effect of *charges* and expenses (as defined in COB 6.6.19 R) may be calculated on the assumption that *premiums* will continue to be paid after the first year.
- 6.6.51 R The effect of *charges* and expenses must be expressed to the nearest tenth of 1%.

UNIT LINKED CONTRACTS WITH MORE THAN ONE FUND

- 6.6.52 R
 - (1) Where there is more than one fund into which the *premiums* are expected to be paid initially (disregarding any *option* of the *customer* to require the funds to be changed):
 - (a) the effect of *charges* and expenses must be calculated separately in relation to each such fund;
 - (b) unless a representative figure is shown in accordance with (3), each of those reductions in yield must be shown in the information required within *key features*;
 - (c) a brief explanation of the difference between them may be included.
 - (2) If any of the funds referred to in (1) is a unitised with-profits fund, the calculation relating to that fund must be made on the with-profits expenses basis as defined in 6.6.19 R(2).
 - (3) If, in the case of any contract, two or more of the calculations of the effect of *charges* and expenses would produce results which are so similar that one may fairly be regarded as representative of the other or others, only one figure for the effect of *charges* and expenses need be shown accompanied by an indication that it is a representative figure.

REGULAR AND SINGLE *PREMIUM* CONTRACTS

6.6.53 R In the case of any contract where the *premiums* include both a regular and a single *premium*:

- (1) the reduction in yield should be calculated separately for the regular *premiums* and for the single *premium*; and
- (2) each of those reductions in yield should be shown in the information required in COB 6.5 (*key features rules*) with a brief indication of the difference between them.

TABLE OF SPECIMEN VALUES OF THE REDUCTION IN YIELD

6.6.54 R Where COB 6.6.52 R or 6.6.53 R applies in relation to the calculation of the reduction in yield, either:

- (1) different tables must be shown with the values calculated separately for each fund or for the regular *premiums* and the single *premiums* (as the case may require); or
- (2) one table may be used but it must contain those values calculated separately as required by (1) above, and it must make clear to the *customer* (or any potential *customer* in the case of a *financial promotion*) what the different values refer to.

Charges and expenses disclosure for schemes

CONTENT

- 6.6.55 G COB 6.6.57- 6.6.70 set out *rules* and *guidance* on how to calculate *charges* and expenses (as defined in COB 6.6.19 R) for *schemes*.
- 6.6.56 G COB 6.6.57- 6.6.61 provide *rules* and *guidance* for *authorised unit trusts* (and *OEICs* and *recognised collective investment schemes*) and COB 6.6.62 - 6.6.66 *rules* and *guidance* for *investment trust savings schemes*.

Charges and expenses disclosure for authorised unit trusts

CHARGES AND EXPENSES

- 6.6.57 G (1) *Charges* and expenses as defined in COB 6.6.19 R includes 'all explicit *charges* and expenses... and all other deductions and expenses which may or will bear upon the fund'. The following paragraphs give *guidance* on the assessment and apportionment of expenses.
- (2) Those expenses that were, or would be, reported in the Annual Report and Financial Statement of *Authorised unit trust schemes* in accordance with the 'Statement of Recommended Practice' ('SORP') issued by *the FSA*, will normally provide a suitable starting point for any assessment of the level of *charges* and expenses. The same principles apply to funds and *schemes* which are not within the scope of the SORP.

- (3) Where expenses are charged directly against the assets of the fund, it will normally be appropriate to express such expenses as an annual percentage *charge* against the fund, which is then added to other such *charges*. An example is a manager's periodic *charge* to form an aggregate percentage *charge*. It is reasonable to round this *charge* to the nearest 0.05%.
- (4) Where a *scheme* invests in other *packaged products*, it will be necessary to look through to ensure that all *charges* and expenses which the *customer* will or may bear are included. Appropriate allowance may be made for any abatement to avoid double charging. If the *product provider* is not required to make expense disclosure in respect of such *packaged products*, the *charges* and expenses of an equivalent product from another provider should be used. In the case of *investment trusts*, the method in COB 6.6.62 E(4) should be used.
- (5) Where the *unit trust* invests in other *unit trusts*, *charges* and expenses will be based on a reasonable distribution of assets that takes account of the investment philosophy of the *unit trust*.

REPRESENTATIVE UNIT TRUST

- 6.6.58 R (1) **Where a document refers to investment in a number of trusts, charges and expenses (as defined in COB 6.6.19 R) applicable to the trusts selected by the customer must be used. Where this is not practicable, it is permissible to use the charges and expenses of a representative unit trust.**
- (2) **The representative unit trust will normally be the one that is most likely to be selected by the customers to whom the material is issued. Where advantage is taken of this option, the document must include information which shows the differences if other trusts are selected. The normal presentation will be to show the differences as a reduction of investment return, or as an adjustment to the Table in key features. Where the reduction of investment return is used, it will not be necessary to show differences unless the rounded difference is at least 0.1% and the unrounded difference is at least 0.05 %.**

TYPES OF EXPENSES

- 6.6.59 G (1) The following are those expenses and costs of investment that *firms* should take into account when making their calculations. The list is not comprehensive. These are in addition to explicit *charges*.
- (2) Examples of expenses are:
- (a) registration *fees*;
 - (b) safe *custody fees*;
 - (c) trustees' *fees*;
 - (d) handling *charges*;
 - (e) audit *fees*;

- (f) regulators fees and subscriptions;
 - (g) costs of investment management but excluding *dealing* costs of the underlying *portfolio*, and costs associated with routine management and servicing of existing property investments;
 - (h) bid/offer spread in the pricing of *units*.
- (3) The spread in (h) should be on a basis that fairly represents the expected levy of such spread in a *firm's* experience of normal trading conditions.
 - (4) The expenses should include allowance for any value added tax which is not recoverable.

TRANSLATION TO FUND LEVEL

- 6.6.60 R (1) The expenses and explicit *charges* must be adjusted for any expected variation in costs from the period of the report to the period relevant to the disclosure expenses if such variation is believed to make a material difference.**
- (2) The adjusted expenses must be expressed as a proportion of the relevant fund. For established funds, the relevant fund is the average size of the fund for the period of the report.**
- (3) Where the use of the figure calculated as in (2) would be misleading, a fair estimate of the size of the relevant fund which is consistent with the adjusted expenses must be used. The same method must be used in the case of new funds. In determining the reasonable levels of expense to be assumed, account should be taken of the expense attributable to the existing fund which most closely corresponds to it, with proper regard to material differences in cost.**

REVIEW OF EXPENSES

- 6.6.61 R The expenses used in calculations must be reviewed whenever material changes in the levels are identified which would mean that the disclosed amounts are misleading. In any event these must be reviewed at least once a year.**

Charges and expenses disclosure for investment trust savings schemes

CHARGES AND EXPENSES

- 6.6.62 G (1) *Charges* and expenses as defined in COB 6.6.19 R includes all explicit *charges* and, in addition, all other deductions and expenses which are not financed from explicit *charges*. These include deductions and expenses within the trust.**
- (2) The principle is to identify all expenses that will be borne by the *customer* and these will include not only the cost of acquiring a holding but also the cost of disposing of the investment.**

- (3) Where expenses are charged directly against the assets of the *investment trust*, it will normally be appropriate to express the expenses as an annual percentage *charge* against the trust, which is then added to such *charges*, for example, a periodic management *fee* to form an aggregate percentage *charge*. It will be reasonable to round to the nearest 0.05 %.
- (4) Where an *investment trust* company (A) invests in another *investment trust* company (B), it will be necessary to look through to ensure that all *charges* or expenses which the *customer* will or may bear are included. Appropriate allowance may be made for any abatement to avoid double charging. *Charges* and expenses will be based on a reasonable distribution of assets that takes account of the investment philosophy of the *investment trust* company (A). If the *investment trust* company (B) is not required to make expense disclosure in respect of such assets, the *charges* and expenses of a similar *company* should be used.

REPRESENTATIVE INVESTMENT TRUST COMPANY

- R (1) Where a document refers to investment in a number of *investment trusts, charges* and expenses (as defined in COB 6.6.19 R) applicable to the trusts selected by the *customer* must be used. Where this is not practical, it is permissible to use the *charges* and expenses of a representative *investment trust* company.**
- (2) The representative *investment trust company* will normally be the one that is most likely to be selected by the *customers* to whom the material is issued. Where advantage is taken of this option, the document must include information which shows the differences if other trusts are selected. The normal presentation will be to show the differences in the other reduction of investment return, or as an adjustment to the Table in *key features*. Where the reduction of investment return is used, it will not be necessary to show differences unless the rounded difference is at least 0.1% and the unrounded difference is at least 0.05%.**

TYPES OF EXPENSE

- 6.6.64 G (1) Expenses may be incurred either in acquiring or in holding an investment in an *investment trust* company. The list in (2) is not comprehensive and, in respect of other expenses, the list sets out the type of expense that should be included. The report and accounts of the *investment trust* company will normally provide a starting point in assessing the expenses that are charged against the assets of the *investment trust* company. These are in addition to disclosable *charges*.
- (2) The expenses to be included will be of four main types:
- (a) Deductions levied against the assets of the *investment trust* company;

- (b) Management expenses levied against the assets of the *investment trust* company; these expenses include management *fees* plus any management costs financed from *commission* received, *Director's fees*, pension contributions, non-recurring expenses, all other professional and regulator's *fees* and subscriptions, rents paid, depreciations, *custodian fees*, *audit fees* and all other pre-tax expenses (except for interest paid); management expenses include marketing costs, if any;
 - (c) Expenses borne by the *customer* in acquiring or disposing of *investment trust shares*; these include *adviser's commission* (if any), stockbroker *dealing commission* on purchases and sales, stamp duty and withdrawal *charges*;
 - (d) Investment spread in the pricing of the *investment trust shares*.
- (3) Expenses should include allowance for any value added tax which is not recoverable.
 - (4) Expenses in (2)(c) and the spread in (2)(d) should be on bases that fairly represent the expected level of such expenses and spread. Where appropriate, a representative level of expenses and the spread should be used.

TRANSLATION TO TRUST LEVEL

- 6.6.65 R (1) Having identified all the expenses in COB 6.6.64 G(2), a *firm* must express them as rates of *charges* and expenses (as defined in COB 6.6.19 R) that can be used in *projections* and *key features*.
- (2) The process is as follows.
- (a) The expenses in COB 6.6.64 G(2)(a) and (b) must be expressed as a proportion of the overall fund using net asset value: For established companies, the relevant fund is taken to be based on the average size of the *investment trust* company for the period of assessment.
 - (b) The expenses in COB 6.6.64 G(2)(c) and (d) must be expressed as a proportion of the fund based on *share* price or the amount of the investment, as appropriate. Some expenses will be a one-off expense or spread and some will be in the form of an annual *charge*.
 - (c) The rates of *charges* and expenses calculated under (a) and (b) must be added together. The fact that the calculation at (a) used net asset value can be ignored as it is assumed that the level of discount or premium remains unaltered.
- (3) The *charges* and expenses will normally be historic and must be adjusted for any expected variation in the level of costs from the period used in the assessment to the period relevant to the disclosure of the expenses if such variation is believed to make a material difference.

- (4) Where the use of the figure calculated in (3) would be misleading, a fair estimate of the size of the company which is consistent with the adjusted expenses must be used. The same method must be used in the case of new *investment trusts*. In determining the reasonable levels of expense to be assumed, account may be taken of the expenses attributable to the existing *investment trust* which most closely corresponds to it, but with proper regard to any material differences in cost.
- (5) Set-up costs may be amortised over a limited period not normally exceeding five years.

REVIEW OF EXPENSES

- 6.6.66 R The expenses used in calculations must be reviewed whenever material changes in the levels are identified which would mean that the disclosed amounts are misleading. In any event they must be reviewed at least once a year.

Example of the calculation of reduction in investment return

- 6.6.67 G COB 6.6.68 – 6.6.70 contains an example which has been prepared to assist understanding of the method of calculating the reduction in investment return. However, the figures should not be regarded as representative or indicative of likely levels of *charges* and expenses to be expected.

GENERAL

- 6.6.68 G
- (1) The reduction in investment return shows the effect of all *charges* and expenses to the *customer*.
 - (2) The rates of investment return allow for all tax and withholding tax for which the *product provider* is responsible. The current rate of tax may be used to calculate the net distribution of income. Where appropriate, the net distributions are offset from the rate of investment return.
 - (3) It is not necessary to allow for daily changes so that monthly steps are acceptable.
 - (4) The rates of return are assumed to compound annually. The twelfth root is used to calculate the monthly rate. This is different from the fund management *charge* where normally one twelfth of the annual rate is deducted monthly.
 - (5) The bid/offer spread should be allowed as an initial *charge* so that subsequent figures are on the basis of the *bid price* except where the context requires allowance to be made for the spread.

THE PARAMETERS

- 6.6.69 G
- (1) Contract details: *unit trust* for a term of 10 years with a single investment of £6,000 (SP)
 - (2) Distributions: at the rate of 2.4% per annum, distributed as 1.2% of the offer value at the end of each half year
 - (3) *Charges*:

- (a) initial *charge* of 3% of investment (IC);
 - (b) fund management *charge* of 1/12 of 1.25% per month (FMC) on distribution *units*;
 - (c) Attributable expenses of 1/12 of 0.25% per month (AE);
 - (d) Investment spread of 3% (IS) making total bid/offer spread of 6%;
- (4) Calculation:
- (a) Investment of £6,000 (SP) less (IC+IS) giving an initial bid value of £5,640
 - (b) Interest of 6% pa or 0.4868% per month less (FMC + AE)
 - = $1.004868 \times (1 - 0.015/12) - 1$
 - = 0.3612% per month
 - (c) The value after 10 years as shown in Table 0 (9)G is £6,720
 - (d) The internal rate of return necessary to generate £6,720 plus distributions over 120 months from an initial investment of £6,000 is 0.3030% per month or 3.7% per annum
 - (e) One method of creating the table is to use 20 periods of six months each of which end with the payment of a distribution.
 - (f) After 6 months:
 - (i) The bid value of the fund prior to the distribution is $6000 \times 0.94 \times (1.003612)^6 = £5,763$
 - (ii) The distribution is $0.012 \times 5763/0.94 = £73$
 - (iii) The fund carried forward is $5763 - 73 = £5,690$
 - (iv) After the end of Year 1 ie. after the second 6 months
 - (v) The bid value of the fund prior to the distribution is $5690 \times (1.003612)^6 = £5,814$
 - (vi) The distribution is $0.012 \times 5814/0.94 = £74$
 - (vii) The fund carried forward is $5814 - 74 = £5,740$
 - (viii) This bid value is disclosed as there is no exit penalty as 'what you might get back'.
 - (g) The 'effect of deductions' is calculated from the accumulation of the investment with no allowance for *charges* and expenses but with allowance for income.
 - (i) The accumulated fund after 1 year with no allowance for *charges* is $[6000 \times (1.004868)^6 - 73] \times (1.004868)^6 - 74 = £6,210$
 - (ii) The 'effect of deductions' is this figure less 'what you might get back' ie $£6,210 - £5,740 = £470$

- (h) This process is continued throughout the term of the table. After 10 years, the accumulated investment at 0.4868% per month with no allowance for *charges* and expenses but with allowance for the same distributions of income is £8,621. 'What you might get back' is £6,723 so 'effect of deductions' is the difference or £1,898.
- (i) The deduction in investment return is determined by calculating the rate of interest which accumulates the investment with no allowance for *charges* and expenses but with allowance for income to £6,723. This is 0.3030% per month (0.4868% per month gives £8,621)
The yearly rate is $(1.00303)^{12} - 1$ or 3.7%.

TABLE

6.6.70 G In Table 6.6 (9)G projected amounts are rounded down to three significant figures.

Table 6.6(8)G

At end of year	Investment to date £	Income to date £	Effect of deductions to date £	What you might get back £
1	6,000	148	470	5,740
3	6,000	451	715	5,940
5	6,000	766	998	6,150
10	6,000	1,600	1,890	6,720

The last line in Table 6.6 (9)G shows that over 10 years the effect of total *charges* and expenses could amount to £1,890.

Putting it another way, this would have the same effect as bringing the illustrated investment growth from 6.0% a year down to 3.7% a year.

Assumptions for pension annuities

6.6.71 R The formulae shown below must be used for calculating the factors for converting a *retirement fund* into an annuity. The formulae assume that the annuity will be payable monthly in advance for a term certain of n years (typically 5):

- (1) for an *RPI* linked and *LPI* linked annuity (excluding a protected rights annuity)

$$\text{Factor} = (1+E) * [\ddot{a}_n^{(12)} + D_{x+n} / D_x * \ddot{a}_{x+n}^{(12)}]$$

- (2) for an annuity which is static or has fixed rates of escalation

$$\text{Factor} = (1+E) * [\ddot{a}_n^{(12)} + D_{x+n} / D_x * \ddot{a}_{x+n}^{(12)}]$$

- (3) for a spouse's reversionary annuity (excluding a protected rights annuity, and whether or not there is overlap with any guaranteed period under the associated single life annuity)

$$\text{Factor} = (1+E) * [a_y - a_{x:y}]$$

- (4) for a pre April 1997 protected rights annuity

$$\text{Factor} = (1+E) * [\ddot{a}_f^{(12)} + 0.45 * (a_m - a_{m:f})]$$

- (5) for a post April 1997 protected annuity

$$\text{Factor} = (1+E) * [\ddot{a}_f^{(12)} + 0.50 * (a_m - a_{m:f})]$$

- 6.6.72 R (1) All factors must be rounded to three decimal places before being applied to the *retirement fund*.

- (2) In the formulae the letters a and D have their normal actuarial notation meanings. In formulae for two lives, x is the member and y is the spouse, and for the protected rights formulae, f indicates the use of female mortality and m that for males. In addition, a monthly annuity $\ddot{a}_x^{(12)}$ is taken as $a_x + 13/24$, and $\ddot{a}_{x:t}^{(12)}$ is taken as $(13/24 * \ddot{a}_{x:t} + 11/24 * a_{x:t})$.

- (3) For retirement other than on a birthday, the factors must be obtained by linear interpolation on complete months. Where a member is not able (for practical reasons or otherwise) to determine the exact age at retirement, it must be assumed that the exact age at retirement is then the age at the last birthday.
- (4) Where the *projection* is of an annuity after taking a tax-free lump sum, the table must be used with the *retirement fund* reduced by the projected tax-free lump sum before rounding. Any tax-free lump sum illustrated should be rounded to three significant figures, unless the lump sum is equal to the amount of a loan.
- (5) Where a *retirement fund* includes both protected rights and non-protected rights benefits, the appropriate factors are to be used for each relevant part of the total fund.
- (6) Where *customers* have post April 1997 protected rights funds and are not married at retirement, an *illustration* of single life pensions may be provided. The factor must be calculated using the same assumptions as formula (5) in COB 6.6.71 R but ignoring the reversionary annuity part of the formula.

- 6.6.73 R In the formulae in COB 6.6.71 R, the allowance for expenses (E) is:

- (1) for index linked annuities: 3.5%
- (2) for all other annuities: 4%

- 6.6.74 R In the formulae in *COB 6.6.71 R*, mortality rates must be calculated as follows:
- (1) the mortality table to be used is P80, amounts, with the mortality improvements projected forward to 2010, and with one year deducted from age;
 - (2) where there are two lives concerned, for reversionary and for protected rights annuities, the husband is normally to be taken as being three years older than his wife; where the *firm* is aware that the wife is more than six years younger than her husband, an exact calculation must be performed using actual ages;
 - (3) protected rights annuities must be calculated for both sexes on the basis that the member enjoys female mortality and the spouse experiences male mortality.
- 6.6.75 R In the formulae in *COB 6.6.71 R*, the mortality functions must be calculated at a rate of interest *J*, where:
- (1) $J = (1 + I)/(1 + R) - 1$
 - (2) *R* is the rate of escalation increase appropriate for the *customer* in formulae (2) and (3) in *COB 6.6.71 R*; it is 3% for pre-April 1997 protected rights benefits in formula (4), and zero otherwise;
 - (3) the rate of return assumptions (*I*) are as set out in the tables in *COB 6.6.44 R* with real rates of return being used for formulae (1) and (5) in *COB 6.6.71 R* and monetary rates otherwise; and
 - (4) different factors will need to be calculated where a *projection* is being prepared on lower and higher rates of return, and where appropriate also the intermediate rate.

Pension transfer value analysis requirements

CONTENT

- 6.6.76 G *COB 6.6.77 – 6.6.82* outline how a *pension transfer value analysis* should be prepared. A *pension transfer value analysis* should provide a comparison between the potential benefits available to the *customer* from an *occupational pension scheme* of which he is a member and the potential benefits that would be available to him under a personal pension or buy-out contract.

BASIS OF A PENSION TRANSFER VALUE ANALYSIS

- 6.6.77 R
- (1) The basis for the *pension transfer value analysis* must be fair, clear and not misleading.
 - (2) The information analysed must include details relevant to the *customer's* circumstances:

- (a) Spouse's, dependants' and children's pensions;
- (b) early retirement provision, including provision for retirement in ill-health;
- (c) a transfer value quotation detailing:
 - (i) guarantee period;
 - (ii) pre- and post-April 1988 Guaranteed Minimum Pension and excesses;
 - (iii) revaluation rates both in deferment and payment, and whether they are guaranteed or discretionary;
 - (iv) tax-free cash arrangements;
- (d) lump sum death benefits;
- (e) Transfer club arrangements, if applicable;
- (f) Relevant earnings;
- (g) Period of service;
- (h) *Scheme* details (eg benefits, bridging pensions, guarantee periods, position before and after normal retirement date, history of discretionary increases);
- (i) Whether members' benefits have been equalised for service from 17 May 1990;
- (j) ill-health benefits.

REQUIRED COMPARISONS

6.6.78 R The analysis must contain the following:

- (1) where the period before benefits are assumed to commence is one year or more:
 - (a) a statement of the rates of return, calculated as in *COB* 6.6.81 R(2), which would have to be achieved under the transfer contract in *order* to provide the same level of benefits as those which would be afforded by the *occupational pension scheme* if the *customer* were to retire at normal retirement date ('the Target Benefits');

- (b) if in the *firm's* opinion early retirement would be materially more favourable to the *customer* than retirement at normal retirement date, a statement of the rates of return, calculated as in COB 6.6.81 R(2), which would have to be achieved under the transfer contract in *order* to provide the same pension as that afforded by the *occupational pension scheme*, assuming early retirement at a date on which the *customer* may be expected, or will have the *option*, to retire;
 - (c) a statement of the value of the benefits payable on the death of the *customer*, under the transfer contract and under the *occupational scheme*, on the assumption that the *customer* were to die on the day after the date on which the transfer contract is assumed to have commenced; comparisons assuming other dates of death may be included if they are likely to enhance understanding of the differences between the benefits payable under the transfer contract and the *occupational pension scheme*;
- (2) where the period before benefits are assumed to commence is less than one year:
- (a) a statement of the annuity payable under the transfer contract and of the comparable Target Benefits;
 - (b) where the normal retirement date under the *occupational pension scheme* is not within a year, a statement of the rates of return, calculated as in COB 6.6.81 R(2), which would have to be achieved under the transfer contract in *order* to provide the Target Benefits.

6.6.79 R (1) In all cases (except in a case within 6.6.78 R(2) in respect of the annuity) a statement of the assumptions made which must comply with the requirements of COB 6.6.80 R.

REQUIRED ASSUMPTIONS

6.6.80 R (1) The assumptions in Table 6.6 (10)R must be made for the purposes of the required calculations:

Table 6.6(9)R

Annuity interest rate ("AIR")	As published by <i>the FSA</i> from time to time [<i>the FSA</i> annuity rate]
Retail prices index	AIR – 3%
Average earnings index ("AEI") and section 21 orders	AIR – 1.5%

Pre-retirement limited price indexation revaluation	AIR – 3% (maximum 5%)
Post-retirement limited price indexation increases	AIR – 3% (maximum 5%)
Index-linked pensions	AIR – 3%
Note: The interest rate in deferment must not be assumed but calculated as required by COB 6.6.81R.	

- (2) The assumptions may be varied only to incorporate more cautious assumptions.
- (3) If an annuity interest rate different from *the FSA* annuity rate is used, it must be the interest rate for annuities in payment provided that it is a multiple of 0.5% per annum and must not exceed *the FSA* annuity rate for zero years to retirement.
- (4) Where the *occupational pension scheme* has a record of discretionary increases in pension, the assumptions must be consistent with the published practice of the trustees, if any, or based on a comparison of the increases granted over the last five years with a published index. It must be assumed that increases will continue, and allowance must be made for continuation by:
 - (a) relying on any statement by the trustees of their practice;
 - (b) comparing recent experience with the increase in the retail price index and restricting the future allowance to a maximum of the increase in the retail price index;
 - (c) making a default assumption of limited pension indexation;
 - (d) assessing the likelihood whether such increases will continue to be paid.

Figures may be provided showing the effect of applying a factor representing the likelihood of such continuation.

METHOD OF CALCULATION

- 6.6.81 R (1) In calculating the Target Benefits for the purposes of the comparisons required by COB 6.6.77 R above, regard must be had to benefits which commence at different times.

- (a) Where a benefit becomes payable at a different age from the age at which the Guaranteed Minimum Pension becomes payable, the benefit must be valued from its appropriate commencement date.
 - (b) In the case of pensions payable only for a limited period, an allowance must be made.
- (2) The method of calculating the rate to be used for the purpose of the comparisons required by *COB* 6.6.78 R is:
- (a) make the assumptions required by *COB* 6.6.80 R;
 - (b) on those assumptions, calculate the Target Benefits;
 - (c) calculate, in accordance with *COB* 6.6.30 – 6.6.54 which relate to the calculation of *projections*, the interest rate in deferment necessary to attain a transfer value sufficient to provide benefits equal to the Target Benefits.

REQUIRED DISCLOSURES

6.6.82 R The analysis must also contain:

- (1) a list of all the main assumptions made for the purposes of the analysis, set out consecutively and with equal prominence;
- (2) a warning as to the differences between the amounts of benefit under the *occupational pension scheme* and the level of benefits under the proposed transfer contract which depends on future investment performance and on interest rates at the time of retirement;
- (3) a description of any differences in the dates on which the pensions become payable, for example in the case of a protected rights pension under a personal *pension scheme* which will not become payable until the *customer* attains the State retirement age;
- (4) a warning of any shortfall in the value of the death benefits provided by the transfer contract and, where there is such a shortfall, if appropriate, a quotation for provision to make good the shortfall.

6.7 Cancellation and Withdrawal

APPLICATION

6.7.1 R This section applies to a *firm* which is:

- (1) a *product provider*;
- (2) an insurer, which provides *pure protection contracts*;
- (3) an intermediary, when acting as an *EIS manager, ISA manager or plan manager*, or when *selling on to a customer units* which the *firm* has bought or redeemed as *principal* for that purpose; or
- (4) a *deposit taking firm*, when acting as an *ISA manager* or as the *firm* responsible for holding *deposits* in respect of another *firm's ISA cash deposit component*.
- (5) the manager of a stakeholder pension scheme**

6.7.2 G (Unless COB 6.7.1 R (3) applies), the *firms* to which the *COB rules* in this section apply are *product providers*, insurers, *deposit taking firms* or stakeholder pension scheme managers, ie the *firms* responsible for issuing the *life policy*, *selling the units*, or issuing *long term insurance contracts*, or *accepting deposits for ISAs*, or acting as the manager of a stakeholder pension scheme.

6.7.3 R The *COB rules* in this section apply where an individual *customer* enters into an investment agreement with a *firm*, for which there is a right to cancel or withdraw, the purchase of:

<p>(with or without investment <i>advice</i>):</p> <p>(a) an <i>appropriate personal pension</i>;</p> <p>(b) an <i>ISA cash deposit component</i>;</p> <p>(c) a <i>life policy</i> (including a <i>pension policy or ISA insurance component</i>);</p> <p>(d) a <i>pension contract</i>;</p> <p>(e) a <i>pure protection contract</i>.</p> <p><u>(f) a stakeholder pension scheme</u></p>	<p>(following investment <i>advice</i>):</p> <p>(a) an <i>Enterprise Investment Scheme (EIS)</i>;</p> <p>(b) an <i>ISA</i>;</p> <p>(c) an <i>ISA sterling deposit or PEP sterling deposit</i>;</p> <p>(d) a <i>PEP</i>;</p> <p>(e) <i>units in an authorised unit trust or OEIC</i>.</p>
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PURPOSE

- 6.7.4 G This section reinforces *Principle 6*, which requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. In certain circumstances, *customers* who are entering into an investment agreement will be entitled to a period of reflection during which they can decide whether to proceed with their purchase.

THE RIGHT TO CANCEL

- 6.7.5 R A *customer* has the right to cancel an investment agreement which is:

- (1) specified in column 1 of Tables COB 6.7(1) R and COB 6.7(2) R, unless the right to cancel is disapplied or replaced by anything in column 2 of Tables COB 6.7(1) R and COB 6.7(2) R;
- (2) an *ISA cash deposit component*, through use of the simplified cancellation provisions set out in Table COB 6.7(4) R).
- (3) **subject to COB 6.7.10 R a stakeholder pension scheme.**

- 6.7.5A G The trustees of some occupational pension schemes and the trustees and managers of stakeholder pension schemes are treated as individual customers for the purposes of the cancellation rules and acquire the right to cancel, as 'investors', in certain circumstances when they purchase life policies or schemes as investments of their pension schemes. Individual members of stakeholder pension schemes have the right to cancel initial membership of the scheme and, in some circumstances, subsequent variations to their contributions.

- 6.7.6 G A *product provider or manager of a stakeholder pension scheme* (see COB 6.7.2 G) may be unsure whether any of the situations in Column 2 of Table COB 6.7(2) R applies to the agreement in question. In such circumstances the *product provider or manager 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 *COB rules* in this section remains with the *product provider or manager of a stakeholder pension scheme*.

- 6.7.7 R (Subject to COB 6.7.8 R), where the *customer* has the right to cancel under COB 6.7.5 R (1) that right must be exercised within:

- (1) (in the case of a *life policy*), the shorter of:
 - (a) thirty days; or
 - (b) the period (ie 14 days or more) specified by the *firm*;from the date when the *customer* received from the *firm* notice under COB 6.7.20 R of the right to cancel (a “post sale notice”);
- (2) (in any other case), fourteen days from the date when the *customer* received a post sale notice from the *firm*.

- 6.7.8 R Where the terms of the *firm's* contract give the *customer* a longer period to cancel (ie in excess of the fourteen or thirty days specified), the *firm* must disclose in the post-sale notice the differences between the *customer's* rights under COB 6.7.7 R and the terms of the contract, which operate independently.

THE RIGHT TO WITHDRAW

- 6.7.9 R A *customer* has the right to withdraw an offer to enter into:
- (1) (subject to case 9 of column 2, Table COB 6.7(2) R), an *EIS, ISA* or a *PEP*, following investment *advice*, through use of the procedures in case 8 of column 2, Table COB 6.7(2) R); or
 - (2) (unless the *customer* is given a right to cancel under COB 6.7.5 R (1)), a *pension annuity* or a *pension transfer*, through use of the procedures in Table COB 6.7(3) R).

THE RIGHT TO CANCEL A STAKEHOLDER PENSION SCHEME

- 6.7.9A R (1) Subject to COB 6.7.9A(2), COB 6.7.7- 6.7.8 shall apply to a *customer* who has entered into an investment agreement for a *stakeholder pension scheme*.
- (2) Where the customer has entered into an investment agreement for a *stakeholder pension scheme* involving recurring contributions to that *stakeholder pension scheme*, only the first contribution will attract cancellation rights under COB 6.7.5R(3) provided that:
- (a) the intention or option to make regular contributions has been disclosed in advance of the *customer* entering into the investment agreement; and
 - (b) the *customer's* intention to make regular contributions is evidenced.

- 6.7.9B G For the purposes of COB 6.7.10(2)(a), disclosure of the option to make regular contributions may, for example, take place in a *key features document*. For the purposes of COB 6.7.10(2)(b) an individual *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.

TABLE COB 6.7(1) R: CANCELLABLE INVESTMENT AGREEMENTS

This table and the notes form part of COB 6.7.5 R (1).

Agreements for a long term insurance contract for which an individual customer has	
Column 1	Column 2
<p>a right to cancel under <i>COB 6.7.5 R (1)</i> (subject to Column 2).</p>	<p>no right to cancel where any one or more of the following cases applies.</p>
<p>A. <i>Life policy</i> (whether or not held within an <i>ISA</i> - see notes 1, 2 and 3), including a variation (see <i>COB 6.7.12 R</i>) of an existing <i>life policy</i>.</p> <p>B. <i>Appropriate personal pension</i>.</p> <p>C. <i>Pure protection contract</i>.</p>	<ol style="list-style-type: none"> 1. <i>Pension fund management policy</i>. 2. <i>Life policy</i> that relates to or is associated with securing benefits under a <i>defined benefits pension scheme</i>. 3. Any <i>life policy</i> for a term of six months or less (unless note 3 applies). 4. <i>Pension policy</i> funded (wholly or in part) from payment(s) derived from: <ol style="list-style-type: none"> (a) a <i>defined benefits pension scheme</i>, for which the right to cancel is replaced by the right to withdraw (see <i>COB 6.7.9 R (2)</i>, using the cancellation substitute in Table <i>COB 6.7(3)R</i>); or (b) compensation or redress paid by a <i>firm</i> following a review undertaken in relation to a complaint. 5. <i>Second-hand life policy</i>. 6. <i>Life policy</i> effected by the trustees of an <u><i>occupational pension scheme</i></u> <u>or the employer, or the manager or trustees of a <i>stakeholder pension scheme</i></u> 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

**Agreements for a long term insurance contract
for which an individual customer has**

Column 1	Column 2
<p>a right to cancel under <i>COB 6.7.5 R (1)</i> (subject to Column 2).</p>	<p>no right to cancel where any one or more of the following cases applies.</p> <p>(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 (ie underlying investments are not earmarked for individual <i>scheme</i> members); or</p> <p>(d) Purchase made to insure and secure members' benefits under a <i>money-purchase occupational pension scheme</i> or <u><i>stakeholder pension scheme</i></u> (unless it is the master, first or only <i>policy</i>).</p> <p>7. <i>Pension annuity</i> that is:</p> <p>(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 6.7.9 R (2)</i>), using the cancellation substitute in Table <i>COB 6.7(3)R</i>; or</p> <p>(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.</p> <p>8. Any variation of a <i>life policy</i>:</p> <p>(a) resulting in an increase in the original <i>premium</i> (or previous highest <i>premium</i> if greater) of 25% or less; or</p> <p>(b) arising out of the settlement of a claim for damages or compensation connected with a previous <i>policy</i>; or</p> <p>(c) arising out of a 'pre-selected option' (see <i>COB 6.7.14 G</i>).</p>

Agreements for a long term insurance contract for which an individual customer has	
Column 1	Column 2
a right to cancel under COB 6.7.5 R (1) (subject to Column 2).	no right to cancel where any one or more of the following cases applies.
	9. The <i>customer</i> (see note 4) is <i>habitually resident</i> in: <ul style="list-style-type: none"> (a) a <i>Member State</i> other than the <i>UK</i> at the time of signing the proposal form; or (b) a state which is not a <i>Member State</i> and the <i>customer</i> is not present in the <i>UK</i> at the time of his signing the proposal form.
Notes: <ol style="list-style-type: none"> 1. Recurring single premium <i>life policy</i>. Under certain conditions, only the first <i>premium</i> in what might be a series of <i>premiums</i> (eg in the case of a <i>mini-ISA insurance component</i>) attracts cancellation rights under COB 6.7.5 R (1). The conditions are: <ul style="list-style-type: none"> a) the intention or <i>option</i> to make a series of single <i>premium</i> payments is disclosed at outset (eg in <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. Where a <i>customer</i> enters into a set of investment agreements at the same time (eg 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>customer</i>, the <i>firm</i> should treat the ‘multiple’ agreements’ as being one agreement for the purposes of the <i>COB rules</i> in this section. 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 cases 1, 4 and 7(b) of Column 2. 4. <i>Member State customers</i> (ie <i>customers habitually resident</i> in a <i>Member State</i> other than the <i>UK</i>). <i>UK</i> and non-<i>UK firms</i> (ie <i>UK branches</i> of <i>firms</i> established in a non-<i>EEA State</i>) must apply cancellation in accordance with the rules of that <i>Member State</i>. 	

TABLE COB 6.7(2) R: CANCELLABLE INVESTMENT AGREEMENTS

This table and the notes form part of COB 6.7.5 R (1) and COB 6.7.9 R (1)

Agreements for an <i>EIS, ISA, PEP</i> or <i>units</i> in an <i>authorised unit trust</i> or <i>OEIC</i> for which an individual <i>customer</i> has	
Column 1	Column 2
<p>a right to cancel under COB 6.7.5 R (1) (subject to Column 2).</p>	<p>no right to cancel where any one or more of the following cases applies.</p>
<p>A. <i>Pension contract</i> (see notes 1, 2 and 4), including a variation of an existing <i>pension contract</i> (see COB 6.7.12 R).</p> <p>B. <i>Appropriate personal pension</i> (see note 4)</p> <p>C. Subscriptions (see notes 1 and 2) which can be invested only in <i>units</i> (whether or not held within an <i>ISA, PEP</i> or <i>pension contract</i>) in an <i>authorised unit trust</i> or <i>OEIC</i> purchased from the:</p> <p style="padding-left: 20px;">(a) <i>unit trust manager</i>;</p> <p style="padding-left: 20px;">(b) <i>ACD</i>;</p> <p style="padding-left: 20px;">or its <i>marketing associate</i> (or <i>marketing group representative</i>) as the <i>ISA manager</i> or <i>plan manager</i>.</p> <p>D. Subscriptions (see notes 1 and 2) which can be invested only in <i>ISA sterling deposits</i> or <i>PEP sterling deposits</i>.</p>	<p>1. The <i>customer</i> is not a <i>private customer</i>.</p> <p>2. The agreement is entered into with the <i>firm</i> (and where relevant with the intermediary or <i>introducer firm</i>) as an <i>execution-only transaction</i> (unless note 4 applies).</p> <p>3. The agreement is entered into through a <i>direct offer financial promotion</i> (unless note 4 applies).</p> <p>4. The agreement represents an <i>exchange of units</i> between sub-funds.</p> <p>5. The agreement represents a <i>defined benefits pension scheme</i>.</p> <p>6. The agreement 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>customer agreement</i> (unless note 4 applies).</p>

Agreements for an EIS, ISA, PEP or units in an authorised unit trust or OEIC for which an individual customer has	
Column 1	Column 2
<p>a right to cancel under COB 6.7.5 R (1) (subject to Column 2).</p>	<p>no right to cancel where any one or more of the following cases applies.</p> <p>7. The agreement relates to an <i>EIS, ISA or PEP</i> and is entered into, following investment <i>advice</i>, in accordance with the right to withdraw procedures (see COB 6.7.9 R (1)) under which the offer made by the <i>customer</i> to enter into the agreement cannot be accepted by the <i>firm</i> until at least seven days after the offer is made.</p> <p>8. The agreement relates to an <i>EIS or non-packaged product ISA or PEP</i> and is entered into, following investment <i>advice</i>, in accordance with the COB rules in sections 3.10 (<i>financial promotions</i>) or 4.2 (<i>customer agreements</i>) which require <i>firms</i> to provide an explanation to <i>customers</i> in the <i>customer agreements</i> or <i>EIS particulars</i> that the rights specified in case 8 above will not apply.</p> <p>9. The agreement entered into is a second or subsequent <i>ISA (or EIS)</i> on substantially the same terms (see note 3) as an <i>ISA (or EIS)</i> purchased from the same <i>ISA manager (or EIS manager)</i> in the previous tax year.</p> <p>10. The agreement relates to a change from <i>accumulation units</i> to income <i>units</i> or vice versa, in the same <i>scheme</i>, for which the <i>customer</i> has previously been supplied with <i>key features</i> (see COB 6.2.19 R).</p>

Agreements for an EIS, ISA, PEP or units in an authorised unit trust or OEIC for which an individual customer has	
Column 1	Column 2
<p>a right to cancel under COB 6.7.5 R (1) (subject to Column 2).</p>	<p>no right to cancel where one or more of the following cases applies.</p> <p>11. Pension contract funded (wholly or in part) from payment(s) derived from compensation or redress paid by a <i>firm</i> following a review undertaken in relation to a complaint.</p> <p>13. Any variation of a pension contract:</p> <p>(a) resulting in an increase in the original payment (or previous highest payment if greater) of 25% or less; or</p> <p>(b) arising out of the settlement of a claim for damages or compensation connected with a previous contract; or</p> <p>(c) arising out of a 'pre-selected option' (see COB 6.7.14 G).</p> <p>14. The agreement relates to a recognised collective investment scheme where the agreement is with a <i>CIS operator</i> who is not:</p> <p>(a) an <i>authorised person</i>; or</p> <p>(b) carrying on business in the <i>UK</i>.</p>

Agreements for an EIS, ISA, PEP or units in an authorised unit trust or OEIC for which an individual customer has	
Column 1	Column 2
<p>a right to cancel under COB 6.7.5 R (1) (subject to Column 2).</p>	<p>no right to cancel where any one or more of the following cases applies.</p> <p>15. The agreement relates or would relate to exported products, that is to say:</p> <p style="margin-left: 40px;">(a) where the <i>customer</i> is not <i>habitually resident</i> in the <i>UK</i> at the date of the offer of the agreement; or</p> <p style="margin-left: 40px;">(b) the <i>firm</i> has reasonable grounds for assuming that no investment <i>advice</i> about the agreement was provided by anyone carrying on investment business in the <i>UK</i>.</p>
<p>Notes:</p> <ol style="list-style-type: none"> 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 6.7.5 R (1). The conditions are: <ol style="list-style-type: none"> a) the intention or <i>option</i> to make a series of single payments is disclosed at outset (eg in <i>key features</i>); and b) the intention is evidenced (eg by the <i>customer</i> establishing a direct debit mandate). 2. Multiple agreements. Where a <i>customer</i> enters into a set of investment agreements at the same time (eg 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> should treat the agreements as being one agreement for the purposes of the COB rules in this section. 3. For example, mini- to <i>mini-ISA</i> or maxi- 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</i> or <i>pension contract</i> at the outset and on any subsequent agreement for a variation (see COB 6.7.12 R) of a <i>pension contract</i>. 	

TABLE COB 6.7(3) R: CANCELLATION SUBSTITUTE

This table forms part of COB 6.7.9 R (2) and case 7(a) of column 2 to Table COB 6.7(1) R.

<p>The <i>customer's</i> right to cancel under COB 6.7.5 R (1) is replaced by the right to withdraw (see COB 6.7.9 R (2)) only where (through use of the cancellation substitute - see note 1):</p>	
1.	<p>the <i>firm</i> has supplied (or has reasonably relied upon another <i>firm</i> to supply) to an individual <i>customer</i>, at least fourteen days before the contract is concluded (see COB 6.7.21 G), a written or electronic notice (issued either stand alone or as part of the application form or <i>suitability letter</i>) which prominently states:</p>
	<p>a) that the <i>customer</i> has a period of at least fourteen days within which to consider his pension options;</p>
	<p>b) the dates at which the period begins and ends (ie in the case of a <i>pension transfer</i> before the transfer has been irrevocably effected);</p>
	<p>c) the pension <i>options</i> available (eg the <i>open-market option</i> in relation to a <i>pension annuity</i>);</p>
	<p>d) the steps the <i>customer</i> must take in order to exercise a particular pension option;</p>
	<p>e) that the <i>customer</i> is entitled to <i>key features</i> and is <i>advised</i> to check with the <i>firm</i> if the <i>key features</i> have not been received;</p>
	<p>f) the cost of any investment <i>advice</i> given to the <i>customer</i> in relation to the transaction; and</p>
2.	<p>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.</p>
<p>Notes:</p> <ol style="list-style-type: none"> 1. The use of the pre-sale cancellation substitute by <i>firms</i> is required for a <i>pension annuity</i> contract (ie in circumstances where the <i>open-market option</i> is applicable) and <i>pension transfers</i> where, because of the difficulty of returning as of right to the original <i>pension contract</i>, post-sale cancellation is not feasible. 2. Where the <i>customer's</i> mode of contact with the <i>firm</i> is electronic (eg facsimile, e-mail or Internet) the <i>firm</i> may issue the notice in the same way. The notice must be issued separately or feature prominently as part of the <i>key features</i> supplied to the <i>customer</i>. 	

TABLE COB 6.7(4) R: SIMPLIFIED CANCELLATION – ISA CASH DEPOSIT COMPONENT

This table and the notes form part of COB 6.7.5 R (2)

<p>The <i>firm</i> must supply (or may reasonably rely upon another <i>firm</i> to supply) to the <i>customer</i> before the account is opened, a written statement (see note 1) which confirms:</p>	
A.	that the <i>customer</i> has a fourteen-day period within which to consider whether or not to keep the account open;
B.	the dates at which the fourteen-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 COB 6.7.25 R);
E.	the steps (eg written or electronic) the <i>customer</i> must take to <i>communicate</i> any decision not to proceed with the account (see note 4); and
F.	that a <i>customer</i> who exercises the right to cancel will not incur any additional <i>charges</i> or be affected by any notice period.
<p>Notes:</p> <ol style="list-style-type: none"> 1. Where the <i>customer's</i> mode of contact with the <i>firm</i> is electronic (eg facsimile, e-mail or Internet) the <i>firm</i> may issue the statement in the same way. The statement must be issued separately or feature prominently as part of the minimum information or <i>key features</i> supplied to the <i>customer</i>. 2. Unless the <i>firm</i> has specified a longer period to the <i>customer</i>, the minimum expiry date is the end of the fifteenth day from the date the account was opened. 3. A <i>firm</i> must either assist the <i>customer</i> in switching accounts or refund all monies <i>deposited</i> together with interest. 4. Written confirmation of the <i>customer's</i> decision to cancel must be treated by the <i>firm</i> as valid and served on the <i>firm</i> as at the date it was posted by the <i>customer</i>. But where the <i>customer's</i> mode of contact with the <i>firm</i> is electronic (see note 1), the <i>firm</i> may accept confirmation issued in the same manner. 	

VOLUNTARY PROVISIONS

- 6.7.10 R If anything in Column 2 of Tables COB 6.7(1) R and (2) R removes the right to cancel an investment agreement, but a *firm* voluntarily gives the *customer* the right to cancel in any event, the *firm* must treat the agreement as if it were cancellable under COB 6.7.5 R (1).
- 6.7.11 G (1) If the *firm* has any doubt whether the investment agreement or the circumstances of its purchase bring the case within any part of COB 6.7.5 R (1) it should treat the agreement as if it were cancellable.
- (2) A *firm* that sends a pre-sale notice or post-sale notice where it is not obliged to do so under COB 6.7.15 R will be taken to have voluntarily granted the *customer* a right to cancel (unless, for the purposes of Table COB 6.7(2) R, there is a relevant *customer agreement* between the *firm* and the *customer*).

VARIATIONS

- 6.7.12 R 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 *firm* must give an individual *customer* the right to cancel (see COB 6.7.5 R (1)) in the following circumstances:
- (1) any variation, other than a 'pre-selected *option*' (see COB 6.7.14 G), providing for substantial increases in *premium* or payment where the increase:
- (a) is being paid by way of varying the existing agreement; or
- (b) will result in a new agreement established on the same terms as the original agreement; and
- represents an increase on the original *premium* or payments (or the previous highest agreed *premium* or payment) of more than 25% (see COB 6.7.13 G);
- (2) any variation, other than a 'pre-selected *option*' (see COB 6.7.14 G), that results in a new agreement, involves fresh contract terms or imposes additional obligations on the *customer* due to a change in the terms of the original agreement; or
- (3) any variation where the increase represents the proceeds of a *pension transfer*.

- 6.7.13 G In the case of 6.7.12 R (1), there is no right to cancel where the variation results in an increase in *premium* or payment of 25% or less. For example, if the first *premium* paid by the *customer* (to the same *policy*) was £1,000, the second was £500, and the third was £900, the *customer* would have no right to cancel in relation to the third *premium*. Whilst £900 is more than 25% greater than £500, it is still below the original *premium* of £1,000. In this case, therefore, the right to cancel would only arise in circumstances where the *premium* was increased to over £1,250 (this being more than 25% of the original *premium*).
- 6.7.14 G COB 6.7.12 R (1) and (2) do not apply where the increase results from a 'pre-selected *option*'. Increases of this type (eg index-linked *premiums* or pension contributions that increase or decrease as salary fluctuates) will have been previously disclosed (eg in the *key features* or 'terms and conditions') and agreed with the *customer* at the outset. Any subsequent increases of 25% or more resulting from a 'pre-selected *option*' will not, therefore, attract fresh disclosure or cancellation rights.

GIVING THE *CUSTOMER* NOTICE OF THE RIGHT TO CANCEL

- 6.7.15 R Where there is a right to cancel, under COB 6.7.5 R (1), the *firm* which enters into the agreement with the individual *customer* (also see COB 6.7.17 R) must give the *customer* clear and prominent notice of this right:
- (1) Before the agreement is concluded (a 'pre-sale notice'); and
 - (2) After the agreement has been concluded (a 'post-sale notice');
- in writing or in electronic form where the *customer* has contacted the *firm* electronically (see COB 6.7.16 G).
- 6.7.16 G For electronic transactions (eg facsimile, e-mail or Internet) the COB rules in this section permits the *firm* to issue the pre-sale or post-sale notices, and accept notice from *customers* who are exercising the right to cancel, in the same way.
- 6.7.17 R Where the *customer* (ie holder of a *life policy* or *pension contract*) 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 post-sale notice to:
- (1) the trustee; and
 - (2) the beneficiary or purchaser,
- and must inform the beneficiary or purchaser of the need to give instructions, within the specified cancellation period, to the trustee where the right to cancel is to be exercised.

PRE-SALE NOTICES

- 6.7.18 R A pre-sale notice must contain at least a summary of the information required in a post-sale notice.

- 6.7.19 G The following is an example of the type of summary statement which *firms* could use:
- 'You will be able to cancel your investment 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 informed 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

- 6.7.20 R A post-sale notice must be:
- (1) in writing, or may be issued in electronic form where the *customer* has contacted the *firm* electronically (see COB 6.7.16 G);
 - (2) given to the *customer*:
 - (a) (for any investment agreement specified in Part II of Table COB 6.7(5) R to which shortfall applies), no later than the end of the eighth day; and
 - (b) (for any other investment agreement specified in COB 6.7.5 R (1)), no later than the end of the fourteenth day, after the agreement is concluded (see COB 6.7.21 G);
 - (3) sufficiently clear, prominent (see COB 6.7.27 R) and informative to enable the *customer* to exercise the right to cancel to the extent required; and
 - (4) accompanied by a slip or form (or an electronic equivalent) to enable the *customer* to exercise the right to cancel.
- 6.7.21 G Under the law of contract the agreement is concluded when one party accepts the offer made by the other party. Normally, the *customer* who orders the *units* or submits the *life policy* proposal will be regarded as the offeror, and the agreement will be concluded when the *firm* accepts the instruction or proposal (whether or not the *policy* documents are issued).
- 6.7.22 R The deadlines in COB 6.7.7 R, item 1 of Table COB 6.7(3) R, item A and note 2 of Table COB 6.7(4) R, COB 6.7.20 R (2) and COB 6.7.35 R 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. For example, 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.

- 6.7.23 R** A post-sale notice must be sent by post, or electronically where the *customer* has contacted the *firm* in the same way, except in the case of a *life policy* issued in the course of *industrial assurance business* when it may be given to the *customer* by hand.

FORM AND CONTENT OF POST-SALE NOTICES

- 6.7.24 R** 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 6.7.41 R*) 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;
 - (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 enforce that right.

POST-SALE NOTICES - ISAs

- 6.7.25 R** In the case of *ISAs*, a *firm* must ensure (see *COB 6.7.20 R (4)*) that it gives the *customer* a suitable form to complete which will enable the *customer* to indicate whether the entire *ISA* agreement is to be cancelled or just a particular component or product (see *COB 6.7.26 G*).

- 6.7.26 G** 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

- 6.7.27 R To comply with **COB 6.7.20 R (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 6.7.28 G**).
- 6.7.28 G 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

- 6.7.29 R If a *firm* does not send a post-sale notice, the *customer* can cancel the agreement at any time within two years of the agreement and will not be liable for any shortfall (see COB 6.7.43 R (3)).

EXERCISING THE RIGHT TO CANCEL

- 6.7.30 R A *customer* who has a right to cancel under COB 6.7.5 R (1) may cancel the agreement by serving notice upon the *firm*.
- 6.7.31 R Notice of cancellation is valid if in writing or in any other manner (eg electronic) that the *firm* has told *customers* is acceptable.

VALID NOTICE OF CANCELLATION

- 6.7.32 R (1) A notice of cancellation is valid where it is served on 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 sent by prepaid post and valid in accordance with COB 6.7.31 R and COB 6.7.32 R (1), as being served on the date it was posted (see COB 6.7.33 G).
- 6.7.33 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 posted (or *communicated* electronically).

RECORD-KEEPING

- 6.7.34 R Where notice of cancellation has been served on a *firm* (or its *appointed representative* or agent), the *firm* must make and retain records (which include a copy of the receipt of notice issued to the *customer* and the *customer's* original notice instructions):
- (1) indefinitely in the case of a record relevant to a *pension transfer* or *pension opt-out*; or
- (2) for a minimum period of:
- (a) six years in the case of a record relevant to a *life policy pension contract* or *stakeholder pension scheme*; and
- (b) three years in any other case;

and in each case, the minimum time period runs from the date when the *firm* first became aware that notice of cancellation had been served.

CANCELLATION NOTICES SERVED OUT OF TIME

- 6.7.35 R (Subject to **COB 6.7.8 R**), where a *firm* has sent a post-sale notice it need not accept notice of cancellation if it is served later than the period (ie commencing from the date when the *customer* received the notice) specified for that agreement in **COB 6.7.7 R**.

DEATH OF THE LIFE ASSURED: CANCELLATION OF A PENSION ANNUITY

- 6.7.36 R A *firm* need not accept notice of cancellation of a *pension annuity* contract if the life (or any of the lives) assured under it has died before notice is given.

JOINT POLICYHOLDERS: EFFECTING CANCELLATION OF A LIFE POLICY

- 6.7.37 R In the case of a *life policy*, cancellation by one of several policyholders is valid if that policyholder has the right to cancel, irrespective of whether the policyholder is exercising that right alone or jointly on behalf of all of the policyholders.

EFFECTS OF CANCELLATION

- 6.7.38 R By exercising the right to cancel under **COB 6.7.5 R (1)**, the *customer* withdraws from the investment agreement and:
- (1) the entire agreement; or
 - (2) the particular *ISA* component (see **COB 6.7.25 R**); or
 - (3) the variation alone (see **COB 6.7.12 R (1)**);
- is rescinded.
- 6.7.39 R A *firm* must pay to the *customer* any sums which the *customer* has paid to or for the benefit of the *firm* in connection with the agreement (including sums paid by the *customer* to agents of the *firm*) under **COB 6.7.5 R (1)**, and the *firm* is entitled to receive:
- (1) any property that became the *customer's* under the agreement, plus
 - (2) any sum which the *firm* has paid under the agreement, plus
 - (3) (subject to **COB 6.7.43 R**), any shortfall due under **COB 6.7.41 R**.
- 6.7.40 R Any sum payable under **COB 6.7.39 R** shall be owed as a simple contract debt, and any sums payable in respect of the same cancellation may where relevant be set off against each other.

SHORTFALL

- 6.7.41 R** If a *firm* has sent a post-sale notice that satisfies the *COB rules* in this section, and the market falls during the cancellation period, subject to *COB 6.7.43 R*, the *firm* is entitled under *COB 6.7.39 R (3)* to *charge* the *customer* for the market loss (ie shortfall), calculated in accordance with Table *COB 6.7(6) R*, which the *firm* would incur in cancelling any investment agreement specified in Table *COB 6.7(5) R*.

SHORTFALL: WORKED EXAMPLE

- 6.7.42 G** Table *COB 6.7(6) R* illustrates the process that *firms* need to undertake in order to discover the amount (ie shortfall) by which the purchase price paid by the *customer* is greater than the purchase price prevailing when the *firm* becomes aware that the *customer* has cancelled.

EXAMPLE: In the case of dual-priced investments, the shortfall on cancellation is calculated on an offer-to-offer basis; eg 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 *customer*. The shortfall on cancellation, therefore, is $(209.1 - 196.2) = (12.9p \times 1,000) = \text{£}129$.

EXCEPTIONS TO SHORTFALL

- 6.7.43 R** A *firm* will have no right to *charge* a *customer* for any shortfall which results from the *customer* having exercised the right to cancel in any one or more of the following circumstances:
- (1)** where the *firm* sends the pre-sale notice, or the post-sale notice, later than required by the *COB rules* in this section (irrespective of whether the notice is valid);
 - (2)** where the *firm* fails to make any prominent mention of shortfall in the pre-sale or post-sale notice;
 - (3)** where the *firm* has failed to send a post-sale notice as required by *COB 6.7.15R*;
 - (4)** where the *customer* has served the cancellation notice before the agreement is concluded (see *COB 6.7.21G*).

TABLE COB 6.7(5) R: INVESTMENT AGREEMENTS WHICH ARE SUBJECT TO SHORTFALL

This table and the notes form part of COB 6.7.41 R

<p>Part I: any investment agreement specified in Column 1 of Table COB 6.7(1) R (unless note 1 applies):</p>	
<p>which is:</p> <p>(1) <i>a life policy</i></p> <p>(2) <i>a pension policy</i></p>	<p>Where the investment agreement is effected as a:</p> <p>(a) <i>single premium life policy; or</i></p> <p>(b) <i>single premium pension policy; or</i></p> <p>(c) <i>single premium addition to an existing single or regular premium life policy or pension policy.</i></p>
<p>Part II: any investment agreement specified in Column 1 of Table COB 6.7(2) R (unless note 2 applies):</p>	
<p>which is:</p> <p>(1) <i>an authorised unit trust</i></p> <p>(2) <i>an ISA sterling deposit or PEP sterling deposit</i></p> <p>(3) <i>a pension contract</i></p> <p>(4) <i>an OEIC</i></p>	<p>Where the investment agreement is effected as a:</p> <p>(a) <i>single payment arrangement; or</i></p> <p>(b) <i>single payment addition to an existing single or regular payment pension contract or unit savings plan.</i></p>
<p><u>Part III: a single contribution to a stakeholder pension scheme except where the contribution is a recurring contribution or the stakeholder pension scheme has been established at the outset on the basis of regular contributions.</u></p>	
<p>Notes:</p> <p>Shortfall does not apply to any investment agreement which is established at outset:</p> <p>1. <i>on a regular premium basis, or as a recurring single premium life policy or pension policy;</i></p> <p>2. <i>on a regular payment basis, or as a recurring single payment pension contract or unit savings plan.</i></p>	

TABLE COB 6.7(6) R: CALCULATION OF SHORTFALL

This table and the notes form part of COB 6.7.43 R

A <i>firm</i> must calculate shortfall as at the 'relevant date' (see note 1) as follows:	
A.	take the actual payment made, whether only or first payment (see note 2);
B.	take the equivalent payment that would have been quoted (see notes 3, 4 and 5) to the same <i>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>customers</i> , and
D.	deduct the figure at B (as amended by C) from the figure at A. If the resultant figure is zero or negative, there is no shortfall.
<p>Notes:</p> <ol style="list-style-type: none"> 1. The 'relevant date' would normally be the date when the <i>firm</i> first became aware that notice of cancellation had been served upon it. But, where written notice is served on the <i>firm</i> by prepaid post and in accordance with COB 6.7.32 R (2), or notice is <i>communicated</i> electronically, the 'relevant date' should be taken as the date on which the notice was posted (or <i>communicated</i> electronically) by the <i>customer</i>. 2. If the agreement is a variation of a previous agreement (see COB 6.7.12 R), the <i>firm</i> must treat the increase in <i>premium</i> as the sum in A. 3. If details of the payments necessary to calculate B (eg <i>premium</i> rates, investment prices or yields etc) are not publicly available (see note 6) at the 'relevant date', there is no shortfall. 4. If the agreement relates to a <i>life policy</i> or <i>pension annuity</i> on the life of another, the <i>firm</i> must treat the first life assured as the <i>customer</i> for the comparison in B. 5. Where the change is yield and not <i>premium</i> or price, in order to calculate B the <i>firm</i> must convert the change in yield (if an enhancement) into a change in <i>premium</i> or price. 6. In the case of a <i>forward price</i>, the requirement of public availability is satisfied if both the previous and next relevant prices are published in a national <i>UK</i> newspaper). 	

6.8 Insurance contracts - life and general

APPLICATION

- 6.8.1 R This section applies to *firms* which arrange, effect or carry out *long term insurance contracts* or *general insurance contracts* other than *reinsurance contracts*.
- 6.8.2 G
- (1) This section sets out the product disclosure requirements for *firms* arranging, effecting or *carrying out contracts of insurance*.
 - (2) COB 6.8.9 R and 6.8.11 R prescribe the information to be provided by the *firm* to the *customer* before the contract is made in respect of *long term insurance contracts* that are not also *contractually based investments*. *Firms* are reminded that the product disclosure requirements applying before the contract is made in respect of *long term insurance contracts* that are also *contractually based investments* are prescribed in COB sections 6.1 – 6.5.
 - (3) COB 6.8.12 R – 6.8.14 R prescribe the information to be provided by the *life office* to the policyholder during the term of a *long term insurance contract*, whether a *contractually based investment* or a *pure protection contract*.
 - (4) COB 6.8.18 R and 6.8.19 R prescribe the information to be provided by the *firm* to the *customer* before the contract is made in respect of *general insurance contracts*. There are no requirements to provide information during the term of the contract.

PURPOSE

- 6.8.3 G This section gives support to *Principle 7*, which requires a *firm* to pay due regard to the information needs of its *customers*. It also gives effect to the consumer information provisions of the *Insurance Directives*.

PROVISION OF INFORMATION

- 6.8.4 R Where a *firm* provides information in accordance with COB 6.8.9 R or COB 6.8.18 R, it must provide the information in printed hard copy unless:
- (1) a *customer* has approached the *firm* by electronic means (such as e-mail or facsimile, or by responding to an advertisement delivered through the Internet), when the *firm* may provide it by the same electronic means; or
 - (2) the contract is being made by telephone, when the *firm* may give it orally to the *customer*, provided a printed version of the required information is sent to him within five *business days* of the oral explanation being given.
- 6.8.5 R Where a *firm* provides information in accordance with COB 6.8.13 R or COB 6.8.14 R, it must provide the information in printed hard copy unless the *customer* has *communicated* with the *firm* by electronic means (such as e-mail, facsimile, or through the Internet), when the *firm* may provide the information by the same electronic means.

- 6.8.6 R **Where a *long term insurance contract* or *general insurance contract* is entered into with two or more *customers*, the information required by COB 6.8.9R, COB 6.8.13 R, COB 6.8.18 R or COB 6.8.19 R as applicable must be provided separately to each *customer* or policyholder by the *firm*.**
- 6.8.7 G Electronic methods of providing product disclosure information should only be used where the *customer* expects to *communicate* this way. However, this does not prevent *firms* from publicising their products and services using electronic means. It is important that *customers* should not have access to an application form without first having the opportunity to view the full text of the required pre-sale information. There is no obligation to follow up electronic delivery with printed hard copies.
- 6.8.8 R **A *firm* which provides information to a *customer* in accordance with the *rules* in this section 6.8 must make and retain an adequate record of that information for a minimum period after the information is provided of:**
- (1) six years in the case of a *long term insurance contract*; or
 - (2) three years in the case of a *general insurance contract*.

LONG TERM INSURANCE CONTRACTS WHICH ARE NOT CONTRACTUALLY BASED INVESTMENTS

INFORMATION TO BE PROVIDED BEFORE THE CONTRACT IS MADE

- 6.8.9 R **A *firm* must ensure that before entering into a *long term insurance contract* which is not a *contractually based investment* with a *customer* it provides the *customer* with the information specified in Table 6.8 (1) R, unless, at the time of application, the *customer* is *habitually resident*:**
- (1) in a *Member State* other than the *United Kingdom*, or
 - (2) in a *State* which is not a *Member State*, and the *customer* is not present in the *United Kingdom*.
- 6.8.10 G In most cases the contract will be a *pure protection contract*. If so, items (7) and (8) in Table 6.8 (1) R are unlikely to be relevant.
- 6.8.11 R **The information required by COB 6.8.9 R must be provided to the *customer* either by the *firm* itself or by an intermediary authorised by the *firm* to act on its behalf and must be in English unless the *customer* requests and the *firm* agrees to it being in another language.**

Table 6.8 (1) R – information required by COB 6.8.9 R

(1)	The name and legal form of the <i>company</i> ;
(2)	the <i>company's</i> home state and, where appropriate, the <i>Member State</i> of the <i>branch</i> through which the contract is to be entered into;
(3)	the address of the <i>company's</i> head office (and <i>branch</i> , if appropriate).
(4)	A definition of each benefit and option;
(5)	the term of the contract and the means by which it may be terminated;
(6)	the method of paying <i>premiums</i> and the duration of the payments;
(7)	the method of calculating bonuses and the distribution of bonuses;
(8)	an indication of surrender and paid-up values and the extent to which such values are guaranteed;
(9)	an indication of the <i>premium</i> for each benefit, whether a main or supplementary benefit;
(10)	in the case of a unit-linked contract, a definition of the units to which benefits are linked and an indication of the nature of the underlying assets;
(11)	the arrangements with respect to the period within which the <i>customer</i> may cancel the contract, as required by COB 6.7;
(12)	the tax arrangements which apply to the contract;
(13)	the arrangements for handling complaints about the contract, whether by the policyholder or by a life assured or beneficiary under the contract;
(14)	any arrangements for providing compensation should the <i>firm</i> be unable to meet its liabilities under the contract;
(15)	a statement whether the <i>firm</i> or <i>customer</i> is entitled to choose the law applicable to the contract and: (a) if so, the law which the <i>firm</i> proposes to choose; or (b) if not, the law which will apply.

LONG TERM INSURANCE CONTRACTS

INFORMATION TO BE PROVIDED DURING THE TERM OF THE CONTRACT

- 6.8.12 R **COB 6.8.13 R and COB 6.8.14 R apply to a *life office* where the policyholder was in the *United Kingdom* at the time of signing the application for the *long term insurance contract*.**
- 6.8.13 R **If during the term of a *long term insurance contract* entered into on or after 1 July 1994 there is, after [1 October 2000], any proposed change in the information outlined in items (1) to (10) of Table 6.8 (1), the *life office* must inform the policyholder of the effect of the change before the change is made.**
- 6.8.14 R **Where a *long term insurance contract* entered into on or after 1 July 1994 provides for the payment of bonuses and the amounts of bonus are unspecified, the *life office* must, at least once a year after the first contract anniversary coincident with or immediately following [1 October 2000], either:**
- (1) notify the policyholder of the amount of any bonus which has become payable under the contract, and which has not previously been notified under this *rule*; or**
 - (2) give the policyholder sufficient information to enable him to determine the amount of any such bonus described in (1) above.**
- 6.8.15 G The information under COB 6.8.14 (2) R could include the total value of the benefits (including bonuses) which have accrued under the contract, the rates of bonus which have been declared since the previous notification or provision of information and a note of the benefit(s) to which those new rates should be applied.
- 6.8.16 G Although COB 6.8.14 R does not apply to a bonus if the amount is specified in the contract, *life offices* are free to provide the information if they wish.

GENERAL INSURANCE CONTRACTS

INFORMATION REQUIRED TO BE PROVIDED BEFORE THE CONTRACT IS MADE

- 6.8.17 G **COB 6.8.18 R and COB 6.8.19 R cover information to be provided before the sale of a *general insurance contract*. They contain no requirements for information during the term of the contract.**
- 6.8.18 R **A *firm* must ensure that, before entering into a *general insurance contract* covering a risk situated in the *United Kingdom* with a *customer*, it provides the *customer* with the following information:**
- (1) the arrangements for handling complaints concerning the contract, including the address of any relevant complaints body;**

- (2) the fact that the complaints arrangements do not affect any right of action which the *customer* may have against the *firm*;
- (3) a statement whether the *firm* or *customer* is entitled to choose the law applicable to the contract; and
 - (a) if so, the law which the *firm* proposes to choose; or
 - (b) if not, the law which will apply;
- (4) the home state of the *firm* or *branch* that will cover the risk; and
- (5) where the contract relates to motor vehicle risks, the address of the *firm's* office or representative to which claims should be sent.

6.8.19 R The information required by COB 6.8.18 R must be provided to the *customer* by the *firm* unless it believes on reasonable grounds that the correct information has been provided by a suitably qualified intermediary.

6.8.20 G A *firm* would have reasonable grounds for believing that COB 6.8.19 R has been satisfied if the contract has been submitted to it on behalf of a *customer* by an intermediary that is a member of the General Insurance Standards Council or is an *authorised person*.

Defined Terms in the draft Conduct of Business Sourcebook

marketing associate	<p>in relation to <i>designated investment business</i>, a <i>firm</i> which is a body corporate other than an <i>appointed representative</i>, an <i>independent intermediary</i>, a <i>marketing group representative</i> or a <i>product provider</i> which:</p> <ul style="list-style-type: none"> (a) is a member of a <i>marketing group</i>; (b) is a member of a group; <u>and</u> (c) holds itself out as marketing the <i>packaged products</i> of [other] members of the <i>group</i> only;
packaged product	<ul style="list-style-type: none"> (a) a <i>life policy</i>; (b) a unit in a <i>regulated collective investment scheme</i>; (c) an <i>investment trust savings scheme</i>; <p>whether or not held within a <i>PEP</i> or an <i>ISA</i>;</p> <ul style="list-style-type: none"> (d) <u>a stakeholder pension scheme</u>

<p><i>pension transfer</i></p>	<p>a transaction resulting from a decision made, with or without <i>advice</i> from a <i>firm</i>, by a <i>private customer</i> to transfer deferred benefits from:</p> <p>(a) an <i>occupational pension scheme</i>; or</p> <p>(b) an individual <i>pension</i> scheme providing fixed or guaranteed benefits that replaced similar benefits under a <i>defined benefits occupational pension scheme</i>,</p> <p>to an individual <i>pension scheme</i> or <u><i>stakeholder pension scheme</i></u>, including a self-invested personal <i>pension scheme</i>, providing uncertain benefits;</p>
<p><u><i>stakeholder pension scheme</i></u></p>	<p><u>A scheme established in accordance with Part I of the Welfare and Pensions Reform Act 1999 and the Stakeholder Pension Scheme Regulations 2000</u></p>