

Financial Services Authority

Polarisation

Feedback to CP80

March 2001



Contents

1	Executive summary	3
2	Introduction	5
3	Feedback on responses to questions in CP80	6

Annex A: List of Non-confidential Respondents to CP80

Annex B: The Designated Rules

Any comments or enquiries on this Policy Statement should be sent to:

Patricia Worthington
Investment Business Policy Department
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Telephone: 020 7676 5088
Fax: 020 7676 9717
E-mail: cp80@fsa.gov.uk

It is the FSA's policy to make all responses available for public inspection unless the respondent requests otherwise.

1 Executive summary

- 1.1 The overall response to Consultation Paper 80 (CP80) was one of broad support for the proposed changes to the polarisation rules. Some caution was expressed by some, nevertheless supportive, respondents who were concerned that consumers should not become confused about the status of the person advising them. Of the three proposals put forward, relaxation of the rules for Stakeholder pension schemes (SHPs) and direct offer advertising commanded the greatest support.
- 1.2 The strong support for the SHP proposals was founded in a widespread belief that it was important for SHPs to get off to a good start and that the proposal facilitated that aim. Respondents backed the arguments that the scope for consumer detriment was substantially reduced by minimum standards. Support for the direct offer advertising change was based on the view that this would facilitate an important new innovation in customer relationship management and service which also bore limited risks worth running. A number of firms also expressed strong support for the amendments to the rules that would allow fund supermarkets to continue when the Conduct of Business Sourcebook (COBS) rules come into force. Opinion on CAT standard ISAs was more mixed. The concern was that the relaxation would not move the market very much and gave relatively little benefit for little risk. Respondents reacted to this in two distinct ways. One was to argue for delay leaving the position of ISAs to the second round of consultation. The other was to argue that all ISAs should be liberalised to make the benefits greater. Predictably, this difference of view is split between consumer bodies and product providers respectively.
- 1.3 The views of the IFA sector were principally expressed through its trade association, AIFA, who were against these changes because they considered that they compromised the concept of independent advice for no tangible return. In addition, some 37 out of 4,000 IFA firms made direct responses.

- 1.4 More generally, there was some recognition that the proposals were the first stage of a process in which the more complex issues would be tackled in the second stage. Several respondents anticipated a more substantive consideration of the issues then.
- 1.5 In view of the overall reaction to these proposals the FSA has decided to proceed with them as set out in CP80 for SHPs and direct offer advertising. This will improve access and choice and represent good value for money for consumers in circumstances where the down-side risk is limited and further improvements to disclosure above those already implemented are under development. The FSA has decided to defer reforms for CAT standard ISAs and consider them again as part of the wide-ranging review later in the year.

2 Introduction

- 2.1 This Policy Statement contains the FSA's feedback on CP80 published in January 2001 which set out our proposals for changes to the rules governing the polarisation regime for advice on packaged products. CP80 followed the publication in July 2000 of a report for the FSA by London Economics that analysed several potential ways of amending the polarisation rules. It also follows the publication in November 2000 of correspondence between the FSA and HM Treasury setting out the FSA's advice on how to deal with the Director General of Fair Trading's report on the polarisation rules and the Treasury's acceptance of that advice.
- 2.2 CP80 invited comments on draft Designated Rules modifying the effect of the rules of the SROs, (PIA, IMRO and SFA), to cover SHPs, CAT standard ISAs and direct offer financial promotions before N2. It also invited comments on amendments to the proposed rules for the FSA's COBS as those proposed rules were set out in CP45a and CP61. These amendments would come into effect at N2. The Designated Rules are at **Annex B**. The amendments to the COBS rules will be published at a later date.
- 2.3 We are grateful to the 100 firms, trade associations, consumer organisations and other bodies and individuals that responded to CP80. A list of the 97 respondents not seeking confidentiality is at **Annex A**. This Policy Statement summarises our comments on those responses and sets out our decisions and the reasoning behind them.
- 2.4 A Policy Statement (PS61) provided feedback on the FSA's proposals to enable the introduction of SHPs. It made clear (paragraphs 1.8-1.9) that the SRO rules and COBS rules it contained were subject to the changes consulted upon in CP80. As PS61 envisaged, the Designated Rules at **Annex B** and the changes to the COBS rules to be published at a later date modify, where relevant, the SRO rules published in November 2000 and amend the COBS rules.

3 Feedback on responses to questions in CP80

3.1 This section sets out our feedback and commentary on the response to CP80.

Q1: Comments are invited on the rationale for making the changes described to the polarisation rules in so far as they affect:

- SHPs
- CAT standard ISAs
- Direct offer advertising

3.2 Those respondents replying to this request substantively, used it largely to state their general position on the concept of reforming polarisation and on these three proposals in particular. On balance, there was a clear preference for proceeding with these changes and moving on to a wider-ranging consideration of polarisation. However, some significant organisations did not consider polarisation should be changed yet, or entered significant reservations with their conditional acceptance of the proposals. Small IFA firms responding were substantially but not entirely against any change. Against this, several large financial institutions and their representative bodies believed that the changes should go further right away.

3.3 Most large financial institutions responding argued that polarisation was an encumbrance to their business offering of itself little extra protection to consumers. Many believed that they could increase the take up of SHPs and would make use of the liberalisation of direct offer advertising. Views were more divided on CAT standard ISAs where practical difficulties were put forward to do with trying to unbundle the marketing of CAT standard ISAs from ISAs more generally. The general solution to this difficulty was a request to extend the relaxation to all ISAs.

3.4 Not surprisingly, the trade associations representing these institutions were also supportive of these measures. The ABI was concerned to ensure that direct offer advertisements should make clear that no advice was being given.

AUTIF were concerned that restricting the ISA relaxation to CAT marked ISAs would restrict consumer choice.

- 3.5 Generally, small IFA firms did not respond to the individual questions in CP80. However, their general comments were directed at the rationale for change. They set aside the point that the proposals did not bear on them directly and articulated two strands of argument. The first was that independent advice was intrinsically better than tied. The second was that they had invested much time and money in their businesses and did not consider the threat to that investment warranted.
- 3.6 The IFAs' trade association, AIFA, produced a coherent line of argument pointing out that the proposals did not damage the core concept of polarisation but that they failed to address the issue of generic product suitability. Essentially, AIFA sees the second phase of consultation as the main opportunity for IFAs to state their position.
- 3.7 The FSA Consumer Panel submitted a thoughtful representation. They saw a clear need to change the regime quickly to accommodate SHPs. Equally, they agreed with the analysis on direct offer advertising. They agreed the regime should be changed provided the FSA ensures that there is no confusion for consumers. However, they saw no great urgency for the reform of selling CAT standard ISAs. They thought this pre-empted the second round of consultation by which time research on the form of disclosure for consumers should be available.
- 3.8 The Consumers' Association did not accept the rationale for change. They thought the competition issues raised by the Office of Fair Trading could be adequately dealt with by gap filling. Their principal concerns are around the accountability of product distributors for their actions in the context of the extra complexity and detriment they believe these proposals will give rise to. They would rather improve the market place by adopting product regulation measures to improve standards and change the incentive effect of some commission payment structures.
- 3.9 The Office of Fair Trading thought the polarisation rules appeared unnecessary to ensuring that consumers buy good value financial products in these categories and understand what they commit themselves to. In consequence, they thought the restraints on competition, which the existing rules entail, are difficult to justify on consumer protection grounds. They offered broad support for the changes, noting that they were only a first step to meeting their concerns. They also pointed to the same risks as the FSA Consumer Panel in effective communication with consumers.
- 3.10 One of the professional service firms noticed and commented on the European Union developments described in Annex E to CP80 and devoted their submission to it. They noted that the E-Commerce Directive would have a

major impact because it was incompatible with polarisation. This would still be true if all the CP80 proposals were implemented and pointed to the need to move on to a more radical evaluation of the rules if business was not to go offshore.

FSA's response: Overall, the balance of opinion was clearly in favour of the changes going ahead, although in some cases respondents pointed to risks that they would prefer to see the FSA address if possible. In view of these reactions to the CP80 proposals, the FSA has decided to go ahead with the changes for SHPs and direct offer advertising.

Q2: Comments are invited on the proposed timing of the changes to the polarisation regime.

- 3.11 The timing of the rule changes for SHPs, CAT standard ISAs and direct offer advertising was intended to have effect from the earliest possible date to provide firms with a framework to take advantage of the relaxation of the rules. The Designated Rules overlaying the SRO rules allow the proposals to come into effect prior to N2. A target of around the beginning of April is a challenging date for introduction of the changes and in practice is the earliest possible time for commencement of the Designated Rules. Respondents commenting on this problem generally accepted that it was better to move as swiftly as possible rather than contemplate delay. The rules are permissive requiring no transitional provisions so there is no need to provide a long lead-in time.
- 3.12 Several firms were unclear about the timing of the proposals for direct offer advertising believing these would come at N2. For the avoidance of doubt, the intention has always been to introduce associated changes at the same time as those for SHPs.
- 3.13 For some firms, the lack of lead-time prior to the changes creates difficulties in developing strategy, training staff and producing literature. Overall, although many respondents would welcome more time for preparation, there was some understanding that the rules are permissive and not mandatory. Introducing these relaxations to coincide with the start of SHPs was considered an appropriate move.
- 3.14 Comments on the timing of allowing the adoption of CAT standard ISAs with all other ISAs remaining polarised include:
- Proposed changes will bring little benefit to consumers because at present there are very few free standing CAT standard ISAs in the market.
 - Providers are unlikely to create new CAT standard ISA products in the short term for administrative reasons.

- To single out the liberalisation of CAT standard ISAs in this first phase was seen as an artificial distinction and it was not appropriate to de-polarise some ISAs merely because of the pricing and investment policy adopted.
- De-polarising only some ISAs was seen as introducing complexity and confusion.
- Those seeking a more liberal relaxation believe FSA should de-polarise all ISAs at the same time.

FSA's response: The FSA was faced with a straight choice: to postpone CAT standard ISA liberalisation and consider it as part of the wider second stage consultation or press ahead as envisaged in CP80. The Financial Services Consumer Panel argued for delay on the grounds that a well-researched disclosure proposal was necessary. Furthermore, the industry was not keen on unbundling the marketing of CAT standard ISAs from marketing of all ISAs. AUTIF argued that consumer detriment could result from too narrow a focus on one aspect of the overall value for money consumers could expect to receive from ISAs. London Economics argued that this option produced little benefit for little risk. In the circumstances, there would seem little to be lost from a delay, particularly in view of the industry's lack of interest compared with SHPs. In consequence we have decided to defer relaxation of the rules for CAT standard ISAs and consider them as part of the wider second stage review.

Q3: Comments are invited on the proposed scope of these rule changes.

- 3.15 CP80 invited comments on allowing provider firms to adopt one or more CAT standard ISAs or SHPs and to issue certain categories of advertisements, not containing advice, for products of provider firms outside their marketing group.
- 3.16 Generally there was acceptance of limiting change to the three proposed areas. There were proponents for wider change as well as those who felt no change at all was in the best interests of consumers.
- 3.17 Some respondents sought guidance on criteria for the selection of adopted products. Some were concerned that consumers would assume that product adoption involved a degree of selection based on suitability for the individual client. They say it follows that consumers see providers selecting the best on the market for their range. They argue, therefore, that the selection process should be supported by criteria determined by the FSA.
- 3.18 We agree that it is in the best interests of firms and consumers alike to select a quality product for inclusion in a provider's product range. Disclosure, particularly in 'terms of business' letters, serves to provide an accurate description of the relationship between firms and their customers. The FSA

also believes it is important to preserve the distinction between the independent financial adviser and the tied agent. Therefore we will not create selection criteria that begin to blur the difference between searching the whole market on behalf of the customer and representing one firm's own and adopted products. It follows that we will allow firms to choose their own criteria for the selection of adopted packaged products. This will make it possible for disclosure messages to distinguish between an IFA and any form of tied adviser.

- 3.19 Some respondents saw difficulties arising from tied advisers advising on adopted packaged products. Their concerns were that product bias arises, resulting in a sale of an in-house product in preference to an adopted packaged product. In consequence, the customer may not be provided with best advice.
- 3.20 Once a product is adopted and added to the product range, it will be necessary for an adviser in forming a recommendation to consider it against the customer's needs. The rules governing the framing of a recommendation have not changed and the customer must be advised to buy the most suitable product from the range, including any adopted packaged product. We see no need to make additional rules to support the adoption of SHPs.
- 3.21 The role of introducers raised opposing views. Friendly Societies are unable to make arrangements with introducers who are already tied to another generally larger provider firm. They seek a further relaxation to allow introducers to introduce to more than one firm. The firms who seek no change to the present introducer rules point out that the thread of responsibility for the actions of an introducer qualifying for an exemption from the Financial Services Act will be lost if an introducer makes introductions to the products of more than one firm.

FSA's response: The policy intention is to liberalise distribution and ensure more product choice is available to consumers. However, the FSA view is that it does not seek to create a new category of representative able to distribute the offers, without advice, of multiple providers. Before any such change is made, more research would be needed to establish an adequate framework of responsibility should any breach of the rules occur. Responsibility for enquiry handling would also need consideration. Moreover, it would need to be established how liberalisation of introducers would best benefit consumers. The changes in CP80 were not designed to introduce multi-ties. In consequence we propose to leave introducers in no different position to that of other appointed representatives. This does not require a change to the draft rules.

Q4: Comments are invited on the proposed COB rule changes intended to give effect to these interim changes to the polarisation rules.

- 3.22 Technical representations were gratefully received on the proposed rules. Unavoidably, when the proposed rules were drafted for CP80, COBS rules were not in final text form and the draft was based on CP45a text. This creates another set of drafting changes that need to be made to incorporate comments and ensure that the CP80 proposals and any changes to them are carried through to final text. These changes will be made as soon as possible with the aim of incorporating them into the FSA Handbook.

FSA's response: As stated in CP80, the policy intention is that the Designated Rules and COBS have the same effect.

Q5: Comments are invited on whether a high level approach would be easier to understand and free from unintended side effects.

- 3.23 This question was misunderstood by a number of respondents. It was aimed at canvassing views on taking a very high level approach stating very briefly what was to be permitted and leaving firms to work out their responsibilities under the existing rules as modified. This led to two distinct views emerging, one of which was based on a mis-apprehension. This latter and rather smaller group assumed that the approach taken in CP80 to the designated and COBS rules was a high level approach. They thought it was appropriate.

- 3.24 A larger group understood the question as intended. They were nearly unanimous in their rejection of a high level approach arguing that in such an important policy area it would leave too much to interpretation and chance. A few respondents regretted that it was not feasible to adopt a high level approach. For them it held out the prospect of a smaller rule book giving firms a freer hand to achieve compliance. One or two argued for a high level approach but they qualified their responses by pointing out the same risks as those rejecting the idea.

FSA's response: We conclude that there is insufficient appetite for a high level approach on this issue although the responses indicated that it remains a long term aspiration to couch rules at as high a level as the circumstances will allow.

Q6: Comments are invited on the proposed SRO rule changes intended to give effect to these interim changes to the polarisation rules.

- 3.25 The majority of respondents agreed with the approach of Designated Rules overlaying SRO rules. Several provider firms made strong representations for more guidance on the effect of the Designated Rules. In response to this and our published intention, we are issuing a detailed PIA Regulatory Update, an

IMRO Notice to Firms and SFA Board Notice setting out how the SRO rules are modified. This guidance is being published at the same time as this Policy Statement.

Q7: Are provider firms content that section 16 and similar restrictions do not impose a constraint to the envisaged relaxation to the polarisation rules?

- 3.26 Responses to this question produced a mixed response. With the exception of the Association of Friendly Societies (AFS), trade bodies largely left this issue to their members to analyse since, potentially, its impact will depend on the structure of the individual marketing group.
- 3.27 Most large firms confirmed the analysis in paragraph 5.6 of CP80 that they were familiar with the issue and, through subsidiarisation, they had worked out satisfactory measures to avoid difficulty. For example, where a provider firm did not manufacture a protection product such as term assurance, to complete its range to customers, it would buy it in from a specialist supplier. This, along with all its other products, is sold through a marketing associate. In concept, adopting packaged products is no different.
- 3.28 However, a few large firms did indicate that this issue would pose some difficulty. These representations were cast in terms of highlighting the difficulty rather than ruling out their ability to adopt packaged products or make direct offer financial promotions of the packaged products of other provider firms. But a number of friendly societies and on their behalf, the AFS, reported a more serious problem.
- 3.29 The majority of friendly societies are unincorporated but registered under the Friendly Societies Act 1974. They are only able to carry on the activities listed in Schedule 2 of the Friendly Societies Act 1992. This prevents them from offering products provided by others. Incorporated societies are free to offer stakeholder pensions under Schedule 7 of the 1992 Act. Schedule 7 also permits incorporated subsidiaries of unincorporated societies to sell a small range of other third party products and services. However, section 54 of the 1992 Act invokes a doctrine of proportionality which inhibits societies from developing other areas of business such that they become more substantial than their traditional business. This provision appears to have been little used but does appear to act as a brake on the ability of friendly societies to take rapid advantage of the reform of polarisation.
- 3.30 The AFS recognise that any changes to these restrictions would require changes to primary legislation that is already scheduled to be repealed. It is not practical to seek those changes or to accelerate repeal without making complicated provisions for an awkward period between the date of repeal and N2. In particular, it is not possible simply to repeal without replacement, even

for a short period, a measure implementing an EU Directive in UK law, as is the case here.

FSA's response: Overall, whilst it is unfortunate for some friendly societies and some larger institutions, the overall impact is that the restrictions created by section 16 of the Insurance Companies Act 1982 and like provisions is not great. It will be possible, therefore to proceed with polarisation reforms.

Q8: Comments are invited on the appropriateness of these consumer information measures.

- 3.31 IFAs and their trade body AIFA remain concerned that consumers will be more confused by the changes and do not feel that consumer information communicating the changes is adequate. Aside from the possibility of information overload, they point out a need for clarity in oral disclosures that are seen as more powerful than written information.
- 3.32 The Consumers' Association more widely calls for a review of consumer information. It advocates the use of the FSA's own material by firms as an objective and impartial explanation of the new risks introduced by the reforms. AUTIF note it is important that the FSA, in its information to consumers, does not give the impression that the changes in some way enhance the value and therefore the suitability of particular products, services or courses of action for investors. The majority of respondents, including the ABI, see the measures as reasonable.

FSA's response: Responding to these comments requires some care. It is axiomatic that consumers need information that is clear, relevant and works for them. There is the underlying issue that if the regime were too complicated it would become impossible to explain it. However the way some of the arguments are used seems rather contradictory. For example, one trade association is concerned both about information overload and the inadequacy of the consumer information projected for use. Arguing that this justifies delay or inaction risks the too cautious option of any change always being too difficult. In view of the broad acceptability of the proposals in CP80, the FSA intends to proceed as envisaged. Moreover, this is a two-stage process and the second stage envisages a substantial review and integration of disclosure, the lessons of which will be integrated in a regime for the longer term.

Q9: Should consumers be directed to contact the firm that sold the product or the firm that issued the product as the main contact point for complaints?

3.33 The overwhelming response to this question was that the firm giving the advice should be the firm responsible for dealing with complaints. However, there were some quite thoughtful minority views put forward. Some firms pointed out that some consumers approached the product provider direct, irrespective of the adviser. In some of these cases the issue rightly belonged with the product provider because it was an administration matter or about the product. Others pointed out that they had arrangements which routed a complaint via the product provider, but internal arrangements codified in a service level agreement between adviser and provider ensured complaints were handled expeditiously regardless of where they needed to be dealt with. They thought their arrangements were consistent with high standards of handling consumer complaints and they did not wish to give them up.

FSA's response: There is no need to change the existing complaints handling procedures in the light of the CP80 proposals. Provided the complaints procedure is made clear and operated expeditiously, there is no need to prescribe any changes. Those firms operating in a different manner to the majority of the market need not change their practices. Indeed, there is merit in the idea of codifying complaints handling procedures and performance standards in a service level agreement. It is not for the FSA to prescribe best practice but it can encourage it. Irrespective of their chosen complaints handling procedure, firms should give consideration to a service level agreement to govern that procedure and performance standards.

List of Non-confidential Respondents to CP80

Abbey National plc

Aegon UK

Alexander Price Ltd

Andrew D Singleton

Arthur Andersen

Association of British Insurers

The Association of Friendly Societies

The Association of Independent Financial Advisers

The Association of Private Client Investment Managers and Stockbrokers

Association of Unit Trusts and Investment Funds

AXA Sun Life Services plc

Barclays Bank plc

Berkeley Independent Advisers Limited

Britannia Building Society

Brooks Macdonald Gayer & Co Ltd

Bruce & Partners Harpenden

Cap Gemini Ernst & Young

Charter Devon Law & Co

CMS Cameron McKenna

Coad & Co

The Compliance Institute

Consumers' Association
Cumberland Financial Services Ltd
Dave Mattos
David C Humble & Co
Direct Marketing Association (UK) Ltd
Doug Watt
Eastleys
Equal Partners
Family Assurance Friendly Society Limited
Fidelity Investment Services Limited
Financial Futures (IFA) Limited
Financial Ombudsman Service
Financial Services Compliance Limited
Financial Services Consumer Panel
Financial Variations
Foulkes Bird & Associates
Framlington Investment Management Limited
Fraser-Hann Financial Services Limited
Goss & Co
Graham Paul Financial Services Ltd
Halifax plc
Hartley Greatbatch & Co
Homeowners Friendly Society Limited
HSBC Holdings plc
The Institute of Chartered Accountants
Investment & Life Assurance Group
James M Smyth Life & Pensions
John Davies Investment & Mortgage Services
John Holt & Partners (Financial Services) Limited

John K Miln & Co Ltd
John Maltby Insurance Services
KPMG
The Law Society of Scotland
Leeds & Holbeck Building Society
Legal & General Assurance Society Limited
Lewis Brownlee
Life Insurance Association Limited
Little & Georgiou
Liverpool Victoria Friendly Society Limited
Lloyd's TSB Bank plc
Lupton Fawcett
Lynbrook Financial Management Ltd
The M & G Group
Merlin Financial Consultants Ltd
Michael Philips
MISYS IFA Services plc
The Money Shop (Cornwall) Limited
National Association of Citizens Advice Bureaux
National Federation of Consumer Groups
Newark Insurance Services
Norwich & Peterborough Building Society
Norwich Union Life
Office of Fair Trading
O'Halloran and Company
Pearson Jones plc
Perpetual Investment Management Services Limited
Peter Garside & Co
Phil Billingham Associates

PJ Clifton Financial Services
Plummer Parsons Financial Services Ltd
Principality Building Society
Prudential plc
Roberts Clark Independent Financial Solutions Limited
The Scottish Life Assurance Company
Skandia Life Assurance Group Limited
Society of Financial Advisers
The Society of Pension Consultants
The Standard Life Assurance Company
Swiss Life (UK) plc
Troy French and Partners
Tunbridge Wells Equitable Friendly Society Limited
Virgin Direct
Virginmoney Limited
Whitelaw Wells Financial Planning Limited
Winchester White Management Consultant
Zurich Financial Services (UKISA) Limited

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

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

Part 1: Introduction

1.01 Citation and commencement

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

1.02 Purpose

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

1.03 Designation

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

Part 2: Modification of polarisation in the 1990 rules

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

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

- (a) at the point of first contact with the customer; and
 - (b) where the point of first contact is oral, on a timely basis in writing thereafter.
8. A firm which is a product company or a member of its marketing group must take reasonable steps to inform itself and relevant agents about packaged products available from the marketing group and, where relevant, the adopted packaged products on which advice can be given.
9. A firm which is a product company or a member of its marketing group must take reasonable steps to ensure that its company representatives and appointed representatives provide advice only on packaged products which are:
- (a) those of the marketing group; or
 - (b) adopted packaged products on which advice can be given.
10. Where a firm which is a product company decides that it, or any member of its marketing group, will provide advice to a private customer on adopted packaged products, it must take reasonable steps to ensure that any oral communication with the private customer, or communication with a private customer via a direct offer advertisement, or any disclosure in a firm's terms of business with a private customer by the firm, any member of its marketing group or relevant agents makes clear that advice can be given on adopted packaged products.
11. Where a firm is a product company or a member of its marketing group and makes a specific recommendation to a private customer to buy a packaged product, it must take reasonable steps to ensure that, where the firm can advise on adopted packaged products:
- (a) the recommended packaged product is the most suitable of those available from the marketing group and the adopted packaged products; and
 - (b) no such recommendation is made if there is no suitable packaged product or adopted packaged product available in the marketing group which would secure the private customer's objectives more advantageously.
12. Where a firm has accepted responsibility for advice given by an appointed representative in respect of adopted packaged products, it must take reasonable steps to ensure that the appointed representative does not act as an appointed representative for any principal outside the principal's marketing group.

13. A firm which is a product company or a member of its marketing group need not produce key features for an adopted packaged product on which advice can be given by the firm if it provides to private customers appropriate key features produced by the product company responsible for issuing the adopted packaged product.
14. Where a firm discloses the amount of remuneration receivable or payable by it in respect of an adopted packaged product, it must include all cash payments, benefits and services.

2.02 Advertisements

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

Part 3: Glossary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

‘marketing group’ means a group of persons who:

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

‘ordinary business investor’ means:

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

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

- (a) The Bailiwick of Guernsey;
- (b) The Bailiwick of Jersey;

- (c) The Isle of Man;
- (d) The Commonwealth of Pennsylvania; and
- (e) The State of Iowa;

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

'private customer' means:

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

'product company' means:

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

'small business investor' means:

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

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

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

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

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

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7676 1000 Fax: +44 (0)20 7676 1099
Website: <http://www.fsa.gov.uk>

Registered as a Limited Company in England and Wales No. 1920623. Registered Office as above.