



Financial Services Authority

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

**Rulebook
Amendments and Additions
Release 216**

Financial Services Authority

Release 216

The Financial Services Authority made by order on 15 March 2001 the Financial Services (Conduct of Business) (Modification of Polarisation) Rules 2001. The rules come into operation on 29 March 2001.

These rules are made following proposals set out in Consultative Paper 80.

Filing instructions

These rules should be filed in Chapter I of Volume 1 of the Rulebook.

The Financial Services Authority
March 2001

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.