

SRA Financial Services (Conduct of Business) Rules 2001

These rules, dated 18 July 2001, are made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of schedule 4 to the Legal Services Act 2007, regulating the practices of:

- *Authorised bodies* and *recognised sole practitioners* in any part of the world,
- *REs* in any part of the United Kingdom, and
- *RFLs* in England and Wales,

in carrying out *regulated activities* in the United Kingdom, for the purposes of the Financial Services and Markets Act 2000.

Part 1: RULES

Rule 1: Purpose

- 1.1 The Law Society is a designated professional body under Part XX of *FSMA*, and *firms* may therefore carry on certain *regulated activities* without being regulated by the *FCA*.
- 1.2 The SRA Financial Services (Scope) Rules 2001 set out the scope of the *regulated activities* which may be undertaken by *firms* which are not regulated by the *FCA*. These rules regulate the way in which *firms* carry on such exempt *regulated activities*.

Rule 2: Application

- 2.1 Where a *firm* is a *licensed body*, these rules apply only in respect of:
 - (a) any *reserved legal activity*;
 - (b) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence;
 - (c) any other activity in respect of which the *licensed body* is regulated pursuant to Part 5 of the *LSA*.
- 2.2 Apart from rule 3 (status disclosure), these rules apply to:
 - (a) *firms* which are not regulated by the *FCA*; and
 - (b) *firms* which are regulated by the *FCA* but these rules only apply to such *firms* in respect of their *non-mainstream regulated activities*.

Rule 3: Status disclosure

- 3.1 This rule applies only to *firms* which are not regulated by the *FCA*.
- 3.2 A *firm* shall give the *client* the following information in writing in a manner that is clear, fair and not misleading before the *firm* provides a service which includes the carrying on of a *regulated activity* and in good time before the conclusion of a *contract of insurance*:
- (a) a statement that the *firm* is not authorised by the *FCA*;
 - (b) the name and address of the *firm*;
 - (c) the nature of the *regulated activities* carried on by the *firm*, and the fact that they are limited in scope;
 - (d) a statement that the *firm* is authorised and regulated by the Solicitors Regulation Authority; and
 - (e) a statement explaining that complaints and redress mechanisms are provided through the Solicitors Regulation Authority and the Legal Ombudsman;
- 3.3 Before a *firm* provides a service which includes the carrying on of an *insurance distribution activity* with or for a *client*, and in good time before the conclusion of a *contract of insurance*, it must state that it is an *ancillary insurance intermediary* and make the following statement in writing to the *client* in a way that is clear, fair and not misleading:

"[This firm is]/[We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance distribution activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at www.fca.org.uk/firms/financial-services-register."

Notes

- (i) Where the status disclosure relates to *insurance distribution activities* then the statement in rule 3(3) must be used. The status disclosure need not be tailored to the needs of the individual *client*. The disclosures may be provided alongside or integrated with other material provided to the *client*. These disclosures may be made in the *firm's* client care letter or in a separate letter.
- (ii) Outcome (8.5) in Chapter 8 of the SRA Code of Conduct is that your letterhead, website and e-mails must show the words "authorised and regulated by the Solicitors Regulation Authority" which will assist in meeting the requirements of rule 3(2).

- (iii) The provisions of rule 3(2)(d) and rule 3(3) reflect the requirements of the outcomes in Chapter 1 of the SRA Code of Conduct in respect of complaints handling.

Rule 4: Execution of transactions

- 4.1 A **firm** shall ensure that where it has agreed or decided in its discretion to effect a **transaction**, it shall do so as soon as possible, unless it reasonably believes that it is in the **client's** best interests not to do so.

Note

- (i) Principle 4 sets out your duty to act in the best interests of the **client**. Accordingly, in cases where there is any doubt on the point, **firms** should ensure that transactions are effected on the best terms reasonably available.

Rule 5: Records of transactions

- 5.1 Where a **firm** receives instructions from a **client** to effect a **transaction**, or makes a decision to effect a **transaction** in its discretion, it shall keep a record of:

- (a) the name of the **client**;
- (b) the terms of the instructions or decision; and
- (c) in the case of instructions, the date when they were received.

- 5.2 Where a **firm** gives instructions to another person to effect a transaction, it shall keep a record of:

- (a) the name of the **client**;
- (b) the terms of the instructions;
- (c) the date when the instructions were given; and
- (d) the name of the other person instructed.

Note

- (i) It is not necessary for the **firm** to make a separate record. Normal file notes or letters on the file will meet the requirements of this rule provided that they include the appropriate information. If instructions are given or received over the telephone, an appropriate attendance note would satisfy this rule.

Rule 6: Record of commissions

- 6.1 Where a **firm** receives commission which is attributable to **regulated activities** carried on by the **firm**, it shall keep a record of:

- (a) the amount of the commission; and

- (b) how the *firm* has accounted to the *client*.

Notes

- (i) Any *financial benefit* has to be dealt with in accordance with Outcome (1.15) in Chapter 1 of the SRA Code of Conduct. However, *firms* should bear in mind that in the case of commissions attributable to *regulated activities*, *firms* must also comply with the requirements of the SRA Financial Services (Scope) Rules 2001, rule 4 (c).
- (ii) The record could be a letter or bill of costs provided the information is clear.

Rule 7: Safekeeping of clients' investments

- 7.1 Where a *firm* undertakes the *regulated activity* of safeguarding and administering investments, the *firm* must operate appropriate systems, including the keeping of appropriate records, which provide for the safekeeping of assets entrusted to the *firm* by *clients* and others.
- 7.2 Where such assets are passed to a third party:
- (a) an acknowledgement of receipt of the property should be obtained; and
- (b) if they have been passed to a third party on the *client's* instructions, such instructions should be obtained in writing.

Rule 8: Packaged products - execution-only business

- 8.1 If a *firm* arranges for a *client* on an *execution-only* basis any *transaction* involving a *retail investment product*, the *firm* shall send the *client* written confirmation to the effect that:
- (a) the *client* had not sought and was not given any advice from the *firm* in connection with the *transaction*; or
- (b) the *client* was given advice from the *firm* in connection with that *transaction* but nevertheless persisted in wishing the *transaction* to be effected; and in either case the *transaction* is effected on the *client's* explicit instructions.

Rule 9: Insurance distribution activities

- 9.1 Where a *firm* undertakes *insurance distribution activities* for a *client*, it must comply with appendix 1 to these rules.

Rule 9A: Credit-related regulated activities

- 9A.1 Where a *firm* undertakes credit-related regulated activities, it must comply with appendix 2 to these rules.

Rule 10: Retention of records

10.1 Each record made under these rules shall be kept for at least six years.

Note

- (i) The six years shall run from the date on which the relevant record has been made.

Rule 11: Waivers

11.1 In any particular case or cases the **SRA** shall have power to waive in writing any of the provisions of these rules, but shall not do so unless it appears that:

- (a) compliance with them would be unduly burdensome having regard to the benefit which compliance would confer on **clients** or third parties; and
- (b) the exercise of the power would not result in any undue risk to **clients** or third parties.

Note

- (i) For the avoidance of doubt, the SRA will not waive rules that implement any of the requirements of Directive (EU) 2016/97 on insurance distribution or Directive 2008/48/EC on credit agreements for consumers. See also the SRA's Waivers policy.

11.2 The **SRA** shall have power to revoke any waiver.

Rule 12: Commencement

12.1 These rules come into force on 1 December 2001.

12.2 [Deleted]

12.3 [Deleted]

12.4 [Deleted]

Rule 13: Interpretation

13.1 The SRA Handbook Glossary 2012 shall apply and, unless the context otherwise requires:

- (a) all italicised terms shall be defined; and
- (b) all terms shall be interpreted,

in accordance with the **Glossary**.

Notes

- (i) Whether a transaction is **execution-only** will depend on the existing relationship between the **client** and the **firm** and the

circumstances surrounding that *transaction*. Generally, a *transaction* will be *execution-only* if the *client* instructs the *firm* to effect it without having received advice from the *firm*. Even though this is the case, however, the *transaction* may still not qualify as *execution-only* because, in view of the relationship, the *client* may reasonably expect the *firm* to indicate if the *transaction* is inappropriate. In any event, a *firm* may be negligent (and possibly in breach of Principle 4) if it fails to advise on the appropriateness or otherwise.

- (ii) A *transaction* will also be *execution-only* if the *firm* has advised the *client* that the *transaction* is unsuitable, but the *client* persists in wishing the *transaction* to be carried out. In those circumstances it is good practice (and in some cases a requirement) for the *firm* to confirm in writing that its advice has not been accepted, and that the *transaction* is being effected on an *execution-only* basis.
- (iii) Where the *transaction* involves a *retail investment product*, there is a specific requirement to confirm in writing the *execution-only* nature of a *transaction* (see Rule 8 above).

13.2 These rules are to be interpreted in the light of the notes.

APPENDIX 1: Insurance Distribution Activities

1 Communication and disclosure

1.1 A firm must ensure that, in relation to insurance distribution:

- (a) it communicates all information, including marketing communications, in a way that is clear, fair and not misleading.
- (b) its marketing communications are always clearly identifiable as such.

2 General information to be provided

2.1 In good time before the conclusion of a contract of insurance, a firm must disclose the following information to clients:

- (a) whether the *firm* provides a *personal recommendation* about the insurance products offered;
- (b) the procedures allowing *clients* and other interested parties to register complaints about the *firm* and information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *clients*;
- (c) whether the *firm* is representing the *client* or acting for and on behalf of the *insurer*;

- (d) whether the *firm* has a direct or indirect holding representing 10% or more of the voting rights or capital in a relevant *insurance undertaking*;
- (e) whether a given *insurance undertaking* or its parent undertaking has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*.

3 Scope of service

3.1 Where a *firm* proposes, or gives a *client* a *personal recommendation* for, a contract of insurance, then in good time before the conclusion of an initial contract of insurance, and if necessary on its amendment or renewal, the *firm* must provide the *client* with information on whether the *firm*:

- (a) gives a *personal recommendation* on the basis of a fair and personal analysis;
- (b) is under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings*, in which case the *firm* must provide the names of those *insurance undertakings*; or
- (c) is not under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair and personal analysis, in which case the *firm* must provide the names of the *insurance undertakings* with which the *firm* may and does conduct business.

3.2 If a *firm* informs a *client* that it gives a *personal recommendation* on the basis of a fair and personal analysis:

- (a) it must give that *personal recommendation* on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make that recommendation; and
- (b) that *personal recommendation* must be in accordance with professional criteria regarding which *contract of insurance* would be adequate to meet the *client's* needs.

4 Demands and Needs

4.1 Prior to the conclusion of a contract of insurance, a *firm* must specify on the basis of information obtained from the *client*, the demands and needs of that *client*.

4.2 The details must be adapted according to the complexity of the contract of insurance proposed and the individual circumstances of the *client*.

4.3 A *firm* must give the *client* a statement of the *client's* demands and needs prior to the conclusion of a contract of insurance.

4.4 Any contract of insurance proposed by the firm must be consistent with the client's demands and needs and where the firm has given a personal recommendation to the client, the firm must, in addition to the statement of the demands and needs, provide the client with a personalised explanation of why a particular contract of insurance would best meet the client's demands and needs.

5 Use of intermediaries

5.1 A firm must not use, or propose to use, the services of another person consisting of:

- (a) *insurance distribution*;
- (b) *reinsurance distribution*;
- (c) *insurance distribution activity*; or
- (d) *home finance mediation activity*;

unless the person in relation to the activity is:

- (i) registered in an *EEA* State for the purposes of the *IDD*; or
- (ii) in relation to *insurance distribution activity*, is not carrying this activity on in the *EEA*.

5.2 Before using the services of the intermediary, a firm must check:

- (a) the *Financial Services Register*; or
- (b) in relation to *insurance distribution* or *reinsurance distribution* carried on by an *EEA* firm, the register of its home state regulator,

and use the services of that person only if the relevant register indicates that the person is registered for that purpose.

6 Treating complaints fairly

6.1 In addition to the firm's obligations under O(1.9) and O(1.10) of the SRA Code of Conduct, the firm must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not a client.

7 Remuneration and the client's best interests

7.1 A firm must not:

- (a) be *remunerated*; or
- (b) *remunerate* or assess the performance of its *employees*;

in a way that conflicts with their duty to act in each *client's* best interest.

7.2 In particular, a firm must not make any arrangement by way of remuneration, sales target or otherwise that could provide an incentive to the firm or its employees to recommend a particular contract of insurance to a client when it could offer a different contract of insurance which would better meet its client's needs.

8 Remuneration disclosure

8.1 In good time before the conclusion of the initial contract of insurance and if necessary, on its amendment or renewal, a firm must provide the client with information:

- (a) on the nature of the *remuneration* received in relation to the *insurance contract*:
- (b) about whether in relation to the contract the *firm* works on the basis of:
 - (i) a fee, that is *remuneration* paid directly by the *client*;
 - (ii) a commission of any kind, that is *remuneration* included in the premium;
 - (iii) any other type of *remuneration*, including an economic benefit of any kind offered or given in connection with the contract; or
 - (iv) a combination of any type of *remuneration* set out above in (i), (ii) and (iii).

9 Fee disclosure: additional requirements

9.1 Where a fee is payable, a firm must inform the client of the amount of the fee before the client incurs liability to pay the fee, or before conclusion of the contract of insurance, whichever is earlier.

9.2 To the extent that it is not possible for the amount in paragraph 9.1 to be given, a firm must give the client the basis for its calculation.

9.3 This paragraph applies to all such fees that may be charged during the life of the policy.

10 Means of communication to clients

10.1 This paragraph applies to all information required to be provided to a client in this appendix.

10.2 A firm must communicate information to the client on paper or using any of the following means:

- (a) a *durable medium* other than paper where the following conditions are satisfied:
 - (i) the use of a *durable medium* other than paper is appropriate in the context of the business conducted between the *firm* and the *client*; and
 - (ii) the *client* has been given the choice between information on paper and on a *durable medium* other than paper and has chosen a *durable medium* other than paper; or
- (b) on a website (where it does not constitute a *durable medium*) where the following conditions are satisfied:
 - (i) the provision of that information by means of a website is appropriate in the context of the business conducted between the *firm* and the *client*;
 - (ii) the *client* has consented to the provision of that information by means of a website;
 - (iii) the *client* has been notified electronically of the address of the website, and the place on the website where that information can be accessed; and
 - (iv) the *firm* ensures that the information remains accessible on the website for such period of time as the *client* may reasonably need to consult it.

10.3 For the purposes of paragraphs 10.2(a)(i) and (b)(i), the provision of information using a *durable medium* other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the *firm* and the *client* if there is evidence that the *client* has regular access to the internet. The provision by the *client* of an e-mail address for the purposes of that business is sufficient evidence.

10.4 A *firm* must communicate the information:

- (a) in a clear and accurate manner, comprehensible to the *client*;
- (b) in an official language of the Member State in which the insured risk, or proposed insured risk, is situated or in any other language agreed upon by the parties; and
- (c) free of charge.

10.5 Where a *firm* communicates the information using a *durable medium* other than paper or by means of a website, the *firm* must, upon request and free of charge, send the *client* a paper copy of the information.

10.6 A firm must ensure that a client's choice or consent to receive the information by means of a website (whether a durable medium or where the conditions under paragraph 10.2(b) are satisfied) is an active and informed choice or consent.

10.7 In the case of services supplied to the client by telephone that are subject to the Financial Services (Distance Marketing) Regulations 2004:

- (a) the information must be given in accordance with those regulations; and
- (b) if prior to the conclusion of the *contract of insurance* the information is provided:
 - (i) orally; or
 - (ii) on a *durable medium* other than paper;

the *firm* must also provide the information to the *client* in accordance with paragraph 10.2 immediately after the conclusion of the *contract of insurance*.

11 Cross-Selling requirements where insurance is the ancillary product

11.1 When a firm offers a non-insurance ancillary product or service as part of a package or in the same agreement with an insurance product, it must:

- (a) inform the *client* whether it is possible to buy the components separately and, if so must provide the *client* with an adequate description of:
 - (i) the different components;
 - (ii) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with taking the components separately; and
- (b) provide the *client* with separate evidence of the charges and costs of each component.

11.2 When a firm offers an insurance product ancillary to and as part of a package or in the same agreement with a non-insurance product or service, it must offer the client the option of buying the non-insurance goods or services separately.

11.3 Rule 11.2 does not apply where the non-insurance product or service is any of the following:

- (a) investment service or activities; or
- (b) a *credit agreement* as defined in point 3 of article 4 of the *MCD* which is:
 - (i) an *MCD credit agreement*;
 - (ii) an exempt *MCD credit agreement*;

- (iii) a *CBTL credit agreement*; or
- (iv) a *credit agreement* referred to in articles 72G(3B) and (4) of the *Regulated Activities Order*;
- (c) a payment account as defined in point 3 of Article 2 of Directive 2014/92/EU.

11.4 This paragraph shall not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

11.5 In the cases referred to in paragraphs 11.1 and 11.2, the *firm* must still comply with other provisions in this appendix relating to the offer and sale of insurance products that form part of the package or agreement, including specifying the demands and needs of the *client* in accordance with paragraph 4.

12 Professional and organisational requirements

12.1 A *firm* must ensure that:

- (a) the *firm* and each relevant *employee* possesses appropriate knowledge and ability in order to complete their tasks and perform duties adequately; and
- (b) that all the persons in its management structure and any staff directly involved in *insurance distribution activities* are of good repute.

12.2 In considering a person's good repute, the *firm* must as a minimum ensure that the person:

- (a) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
- (b) has not previously been declared bankrupt

unless they have been rehabilitated in accordance with national law.

13 Insurance Product Information Document and appropriate information

13.1 A *firm* must ensure that the *client* is given objective and relevant information about a *policy* in good time prior to the conclusion of the *policy*, so that the *client* can make an informed decision.

13.2 A *firm* must provide the information in paragraph 13.1 to the *client*:

- (a) whether or not it gives a *personal recommendation*; and
- (b) irrespective of the fact that the *policy* is offered as part of a package with:

- (i) a non-insurance product or service; or
- (ii) another *policy*.

13.3 A firm must ensure that the level of information provided takes into account the complexity of the *policy* and the individual circumstances of the *client*.

13.4 When dealing with a *client* who is an individual and who is acting for purposes which are outside his trade or profession the information provided under paragraph 13.1 must include an *Insurance Product Information Document*.

13.5 A firm must provide the information required in paragraph 13.4 by way of an *Insurance Product Information Document* for each *policy* (other than a pure protection contract).

13.6 Where a firm distributes contracts of insurance, it must have in place adequate arrangements to:

- (a) obtain from the manufacturer of the *contract of insurance*:
 - (i) all appropriate information on the *contract of insurance* and the product approval process; and
 - (ii) the identified target market of the *contract of insurance*; and
- (b) understand the characteristics and the identified target market of each *contract of insurance*.

14 Exclusions for large risks

14.1 Only paragraphs 1, 5, 6, 10, 11, 12 and 14 of this appendix apply where a firm carries on *insurance distribution activities for commercial clients in relation to contracts of insurance covering risks within the following categories*:

- (a) railway rolling stock, aircraft, ships (sea, lake, river and canal vessels), goods in transit, aircraft liability and liability of ships (sea, lake, river and canal vessels);
- (b) credit and suretyship, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;
- (c) (c) land vehicles (other than railway rolling stock), fire and natural forces, other damage to property, motor vehicle liability, general liability, and miscellaneous financial loss, in so far as the policyholder exceeds the limits of at least two of the following three criteria:
 - (i) balance sheet total: €6.2 million;
 - (ii) net turnover: €12.8 million;
 - (iii) average number of employees during the financial year: 250.

APPENDIX 2: Credit-related Regulated Activities

1 Disclosure of information

- (a) Where a *firm* undertakes *credit-related regulated activities* for a *client*, it must ensure that information in connection with such activities and any agreements to which they relate is communicated to the *client* in a way that is clear, fair and not misleading.
- (b) Where a *firm* carries on the activity of *credit broking*, it must indicate in any advertising and documentation intended for consumers or *clients* the extent and scope of its *credit broking* activities, in particular whether the *firm* works exclusively with one or more lenders or as an independent broker.

2 Regulated credit agreements

- (a) Where a *firm* carries on a *credit-related regulated activity* involving a proposed *regulated credit agreement*, it must;
 - (i) provide adequate explanations to the *client* in order to enable the *client* to assess whether the proposed *regulated credit agreement* is suitable to the *client's* needs and financial situation; and
 - (ii) when providing such explanations, comply with the requirements of Article 5(6) of the Directive 2008/48/EC on credit agreements for consumers.
- (b) Before entering into a *regulated credit agreement* as lender, the *firm* must assess the *client's* creditworthiness on the basis of sufficient information to enable the *firm* to make the assessment, where appropriate such information will be obtained from the *client* and, where necessary, from a credit reference agency.
- (c) After entering into a *regulated credit agreement* where a *firm* is the lender, if the parties agree to change the total amount of credit, the *firm* must update the financial information the *firm* holds concerning the *client* and assess the *client's* creditworthiness before any significant increase in the total amount of credit.
- (d) In the event of a *firm* assigning to a third party its rights as lender in relation to a *regulated credit agreement*, the *firm* must inform the *client* of the assignment.

3 Appropriation of payments

Where a *firm* is entitled to payments from the same *client* in respect of two or more *regulated credit agreements*, the *firm* must allow the *client* to put any payments made, in respect of those agreements, towards the satisfaction of the

sum due under any one or more of the agreements in such proportions as the *client* thinks fit.

4 Consumer Credit Guidance

Where a *firm* undertakes *credit-related regulated activities*, it must have regard to any guidance issued by the *SRA* from time to time relating to such activities.