

Chapter 3

Systems and controls



3.3 Additional requirements for insurance distribution

Application

3.3.1 **R** ■ SYSC 3.3 applies to an *insurer* in the course of it carrying on any *insurance distribution activities*.

Effect of provisions marked “EU”

3.3.2 **G** The *IDD Regulation* applies directly to an *insurer* when carrying on *insurance distribution* in relation to *insurance-based investment products*. Some of the articles of the *IDD Regulation* (see the provisions marked with the status letters “UK”) are reproduced in this section for those *insurers* for information only.

3.3.3 **R** (1) To the extent that the *IDD Regulation* does not apply, provisions in this section marked with the status letters “UK” apply to the *insurer* as if they were *rules*.

(2) References in Column (1) to a word or phrase used in the *IDD Regulation* have, for the purpose of ■ SYSC 3.3.3R(1) above, the meaning indicated in Column (2) of the table below:

(1)	(2)
“customer”	<i>Client</i>
“insurance-based investment products”	<i>Policies</i>
“insurance distribution activities”	<i>insurance distribution activities</i>
“insurance intermediary”	<i>insurance intermediary</i>
“insurance undertakings”	<i>Insurer</i>
“relevant person”	any of the following:
	(a) a director, partner or equivalent, or manager of the <i>insurance intermediary</i> or <i>insurer</i> ;
	(b) an employee of the <i>insurance intermediary</i> or <i>insurer</i> , as well as any other natural person

(c)		whose services are placed at the disposal and under the control of the <i>insurance intermediary</i> or <i>insurer</i> and who is involved in the <i>insurance distribution activities</i> ; and
		a natural person who is directly involved in the provision of services to the <i>insurance intermediary</i> or <i>insurer</i> under an outsourcing agreement for the purpose of the carrying on by the <i>insurance intermediary</i> or <i>insurer</i> of <i>insurance distribution activities</i> .
"remuneration"	Remuneration	
"shall"	Must	

3.3.4 G The effect of SYSC 3.3.3R is that:

- (1) the provisions marked "UK" apply as *rules* to an *insurer* when carrying on *insurance distribution activities* other than *insurance distribution* in relation to *insurance-based investment products*;
- (2) where SYSC 3.3.3R applies, an *insurer* is required to read the provisions marked "UK" as though the application of those provisions is not limited to the distribution of *insurance-based investment products*; and
- (3) the scope of the application of the *IDD Regulation* is extended from *insurance distribution* to *insurance distribution activities*.

Identifying conflicts.....

3.3.5 R A *firm* must take all appropriate steps to identify conflicts of interest that arise between:

- (1) the *firm*, including its managers, employees and *appointed representatives* (or where applicable, *tied agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the *firm*; or
- (2) one *client* of the *firm* and another *client*.

[Note: article 28(1) of the *IDD*]

3.3.6 UK 3(1)For the purposes of identifying, in accordance with [SYSC 3.3.5R, SYSC 3.3.13R, SYSC 10.1.3R and SYSC 10.1.8R], in so far as those rules apply to the insurance-based investment products, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome

3.3.7

UK

of the insurance distribution activities, which meets the following criteria:

it is distinct from the customer's or potential customer's interest in the outcome of the insurance distribution activities;

it has the potential to influence the outcome of the distribution activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in the same way for the purposes of identifying conflicts of interest between one customer and another.

3(2) For the purposes of the assessment pursuant to paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, the following situations:

- (a) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the customer;
- (b) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control has a financial or other incentive to favour the interest of another customer or group of customers over the interest of the customer;
- (c) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked by control to an insurance intermediary or an insurance undertaking is substantially involved in the management or development of insurance-based investment products, in particular where such a person has an influence on the pricing of those products or their distribution costs.

[Note: article 3 of the *IDD Regulation*]

Managing conflicts

3.3.8

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A *firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest identified under ■SYSC 3.3.5R from adversely affecting the interests of its *clients*.

[Note: article 27 of the *IDD*]

Proportionality

3.3.9

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The arrangements in ■SYSC 3.3.8R must be proportionate to the activities performed, the *policies* sold and the type of *insurance distributor* the *firm* is or uses.

[Note: article 27 of the *IDD*]

Conflicts policy

3.3.10

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4(1) For the purposes of [■SYSC 3.3.8R, ■SYSC 3.3.9R, ■SYSC 10.1.3R, ■SYSC 10.1.7R and ■SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products, insurance intermediaries and

insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 4(1) of the *IDD Regulation*]

Contents of policy

3.3.11 UK

4(2) The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;

procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the customer.

[Note: article 4(2) of the *IDD Regulation*]

3.3.12 UK

5(1) The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.

The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include, where appropriate, the following:

effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers;

the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;

the removal of any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance

distribution activities are carried out by the insurance intermediary or insurance undertaking or their managers or employees or any person directly or indirectly linked to them by control;

measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest;

a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

5(2) Where insurance intermediaries and insurance undertakings can demonstrate that the measures and procedures referred to in paragraph 1 are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interest of the customer and are not biased due to conflicting interests of the insurance intermediary, the insurance undertaking or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.

[Note: article 5 of the *IDD Regulation*]

Disclosure of conflicts

3.3.13

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(1) If arrangements made under ■ SYSC 3.3.8R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must:

- (a) clearly disclose to the *client* the general nature or sources of the conflicts of interest (or both); and
- (b) include sufficient detail in the disclosure, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the *insurance distribution activities* in the context of which the conflict of interest arises.

(2) The disclosure must be made:

- (a) in a *durable medium*; and
- (b) in good time before the conclusion of the *contract of insurance*.

[Note: article 28(2) and (3) of the *IDD*]

3.3.14

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6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to [■ SYSC 3.3.13R] and [■ SYSC 10.1.8R], in so far as those rules apply to insurance-based investment products, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with [■ SYSC 3.3.8R, ■ SYSC 3.3.9R, ■ SYSC 10.1.3R, ■ SYSC 10.1.7R, ■ SYSC 10.1.7AR], in so far as these rules apply to insurance-based investment products are not sufficient to

ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:

- provide a specific description of the conflict of interest in question;
- explain the general nature and sources of the conflict of interest;
- explain the risks to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
- clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

[Note: article 6 of the *IDD Regulation*]

Review of conflicts policy

3.3.15 UK

7(1) For the purposes of 3.3.8, [■ SYSC 3.3.9R, ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the *IDD Regulation*]

Record keeping

3.3.16 UK

7(2) Insurance intermediaries and insurance undertakings shall keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a customer has arisen or, in the case of an ongoing service or activity may arise.

Senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on the situations referred to in the first subparagraph.

[Note: article 7(2) of the *IDD Regulation*]

3.3.17 R

A firm carrying on *insurance distribution activities* in relation to *insurance-based investment products* must retain its records relating to:

- (1) suitability (■ COBS 9A); and
- (2) appropriateness (■ COBS 10A),

for a period of at least five years.

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- (1) ■ COBS 9A.4 and ■ COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) reproduce certain record keeping requirements of the *IDD Regulation* (and apply these requirements to *firms* not in scope of the *IDD Regulation*). They specify information which should be recorded by *firms* carrying on *insurance distribution* in relation to *insurance-based investment products* and for how long the records must be retained.
- (2) For the purposes of ■ SYSC 3.3.17R, a *firm* will need to consider whether the requirement in article 19 of the *IDD Regulation* (or in ■ COBS 9A.4.3UK or 10A.7.2UK for any *firm* to whom the *IDD Regulation* does not apply) means that a record needs to be retained for longer than five years.

3.3.19

UK

19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the FCA. The FCA shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the *IDD Regulation*]