

SRA Financial Services (Conduct of Business) Rules

Introduction

The SRA, through the Law Society, is a designated professional body under Part 20 of FSMA. This means that firms authorised by us may carry on certain regulated financial services activities without being regulated by the FCA if they can meet the conditions in section 327 of FSMA.

The SRA Financial Services (Scope) Rules 2018 set out the scope of the regulated financial services activities that may be undertaken by firms authorised by us and not regulated by the FCA. These rules regulate the way in which firms carry on such exempt regulated financial services activities and the way in which firms that are dually regulated by us and the FCA carry on their non-mainstream regulated activities.

These rules do not apply to solicitors, RELs and RFLs practising outside firms that are authorised by us.

PART 1: APPLICATION

Rule 1: Application

- 1.1 Apart from rule 2 (Status Disclosure), these rules apply to:
- (a) **authorised bodies** which are not regulated by the **FCA**;
 - (b) **authorised bodies** which are regulated by the **FCA**, but only in respect of their **non-mainstream regulated activities**; and
 - (c) the **managers** and **employees** of **authorised bodies** in (a) and (b) above
- and references to "you" in these rules should be read accordingly.
- 1.2 Where an **authorised body** is a **licensed body**, these rules apply only in relation to **regulated activities**.
- 1.3 Rule 2 applies only to **authorised bodies** which are not regulated by the **FCA**.

PART 2: RULES

Rule 2: Status disclosure

- 2.1 Notwithstanding the wider information obligations in the **SRA Codes of Conduct**, you must give the **client** the following information in writing in a manner that is clear,

fair and not misleading before providing a service which includes the carrying on of a *regulated financial services activity*:

- (a) a statement that you are not authorised by the *FCA*;
- (b) your name and practising address;
- (c) the nature of the *regulated financial services activities* carried on by you, and the fact that they are limited in scope;
- (d) a statement that you are authorised and regulated by the *SRA*; and
- (e) a statement explaining that complaints and redress mechanisms are provided through the *SRA* and the Legal Ombudsman.

[Note: Rule 2.2 is subject to further amendments in order to implement the requirements of the Insurance Distribution Directive (IDD) (EU) 2016/97]

- 2.2 Before you provide a service, which includes the carrying on of an insurance mediation activity with or for a client, you must 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 mediation 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 Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at www.fca.org.uk/register."

Rule 3: Execution of transactions

- 3.1 You must ensure that where you have agreed or decided in your discretion to effect a *transaction*, you must do so as soon as possible, unless you reasonably believe that it is in the *client's* best interests not to.

Rule 4: Records of transactions

- 4.1 Where you receive instructions from a *client* to effect a *transaction*, or make a decision to effect a *transaction* in your discretion, you must 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 on which they were received.

4.2 Where you give instructions to another person to effect a **transaction**, you must keep a record of:

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

Rule 5: Record of commissions

5.1 Where you receive commission which is attributable to your **regulated financial services activities**, you must keep a record of:

- (a) the amount of the commission; and
- (b) how you have accounted to the **client**.

Rule 6: Safekeeping of clients' investments

6.1 Where you undertake the **regulated financial services activity** of safeguarding and administering investments, you must operate appropriate systems, including the keeping of appropriate records, which provide for the safekeeping of **assets** entrusted to you by **clients** and others.

6.2 Where such **assets** are passed to a third party:

- (a) you should obtain an acknowledgement of receipt of the property; and
- (b) if they have been passed to a third party on the **client's** instructions, you should obtain such instructions in writing.

Rule 7: Execution-only business

7.1 If you arrange for a **client** on an **execution-only** basis any **transaction** involving a **retail investment product**, you must send the **client** written confirmation to the effect that:

- (a) the *client* had not sought and was not given any advice from you in connection with the *transaction*; or
- (b) the *client* was given advice from you 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 8: Retention of records

- 8.1 Each record which is made under these rules shall be kept for at least six years from the date it is made.

PART 3: INSURANCE MEDIATION ACTIVITIES

[Note: Part 3 is subject to further amendments in order to implement the requirements of the Insurance Distribution Directive (IDD) (EU) 2016/97]

Rule 9: Disclosure of information

- 9.1 Where you undertake *insurance mediation activities* for a *client*, you must take reasonable steps to communicate information to the *client* in a way that is clear, fair and not misleading.
- 9.2 Where you recommend a *contract of insurance* (other than a *life policy*) to a *client*, you must inform the *client* whether you have given advice on the basis of a fair analysis of a sufficiently large number of insurance contracts available on the market which has enabled you to make a recommendation in accordance with professional criteria regarding which *contract of insurance* would be adequate to meet the *client's* needs.
- 9.3 If you do not conduct a fair analysis of the market where undertaking *insurance mediation activities*, you must:
- (a) advise the *client* whether you are contractually obliged to conduct *insurance mediation activities* in this way;
 - (b) advise the *client* that the *client* can request details of the insurance undertakings with which you conduct business; and
 - (c) provide the *client* with such details on request.
- 9.4 You must provide the information referred to in rules 9.2 and 9.3 to the *client* on a durable medium.

Rule 10: Suitability

- 10.1 Before you recommend a **contract of insurance** (other than a **life policy**) you must take reasonable steps to ensure that the recommendation is suitable to the **client's** demands and needs by:
- (a) considering relevant information already held;
 - (b) obtaining details of any relevant existing insurance;
 - (c) identifying the client's requirements and explaining to the client what the client needs to disclose;
 - (d) assessing whether the level of cover is sufficient for the risks that the client wishes to insure; and
 - (e) considering the relevance of any exclusions, excesses, limitations or conditions.
- 10.2 Where you recommend a **contract of insurance** that does not meet the needs of the **client** because there is no contract that does so available in the market, this should be disclosed to the **client**.

Rule 11: Demands and needs statement

- 11.1 Where you recommend a **contract of insurance** (other than a **life policy**) or arrange a **contract of insurance**, you must, before the contract is finalised, provide the **client** with a written demands and needs statement that:
- (a) sets out the client's demands and needs on the basis of the information provided by the client;
 - (b) where a recommendation has been made, explains the reason for recommending that contract of insurance;
 - (c) reflects the complexity of the contract of insurance being proposed; and
 - (d) is on paper or on any other durable medium available and accessible to the **client**.
- 11.2 Where you arrange a **contract of insurance** on an **execution-only** basis, the demands and needs statement need only identify the **contract of insurance** requested by the **client**, confirm that no advice has been given and state that you are undertaking the arrangement at the **client's** specific request.

11.3 The requirement in rule 11.1 to provide the *client* with a written demands and needs statement before the contract is finalised will not apply in the following circumstances:

- (a) where you act on the renewal or amendment of a *contract of insurance* (other than a *life policy*) if the information given to the *client* in relation to the initial contract is still accurate and up-to-date. If the information previously disclosed has changed, you must draw the attention of the *client* to the matters which have changed before the renewal or amendment takes place;
- (b) where the information is provided orally at the request of the *client*;
- (c) where immediate cover is required;
- (d) where the contract is concluded by telephone; or
- (e) where you are introducing the *client* to an *authorised person* or an exempt person and taking no further part in arranging the *contract of insurance*;

save that in (b), (c) and (d) above the information contained in the written demands and needs statement must be provided to the *client* immediately after the conclusion of the *contract of insurance*.

Rule 12: Exclusion for large risks

12.1 Rules 9 to 11 above do not apply where you carry on *insurance mediation 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) 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.

Rule 13: Notification of establishment and services in other Member States

- 13.1 If you wish to exercise the right conferred by Article 6 of the Insurance Mediation Directive to establish a branch or provide cross-border services in another **EEA** state, an appropriate application must be made directly to the **FCA**. The Rules under the **FCA's** Supervision Manual, SUP 13, Exercise of Passport Rights by **UK** firms, contain details of the applicable process. If you are proposing to provide such services you must comply with the applicable provisions of **FSMA**, as laid down in the **FCA's** Professional Firms' Sourcebook Chapter 7 as amended from time to time.

PART 4: CREDIT – RELATED REGULATED FINANCIAL SERVICES ACTIVITIES

Rule 14: Disclosure of information

- 14.1 Where you undertake **credit-related regulated financial services activities** for a **client**, you must ensure that information in connection with such activities and any agreements to which they relate are communicated to the **client** in a way that is clear, fair and not misleading.
- 14.2 Where you carry on the activity of **credit broking**, you must indicate in any advertising and documentation intended for consumers or **clients** the extent and scope of your **credit broking** activities, in particular whether you work exclusively with one or more lenders or as an independent broker.

Rule 15: Regulated credit agreements

- 15.1 Where you carry on a **credit-related regulated financial services activity** involving a proposed **regulated credit agreement**, you must;
- (a) 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
 - (b) when providing such explanations, comply with the requirements of Article 5(6) of the Directive 2008/48/EC on credit agreements for consumers.
- 15.2 Before entering into a **regulated credit agreement** as lender, you must assess the **client's** creditworthiness on the basis of sufficient information to enable you to make the assessment, where appropriate such information will be obtained from the **client** and, where necessary, from a credit reference agency.
- 15.3 After entering into a **regulated credit agreement** where you are the lender, if the parties agree to change the total amount of credit, you must update the financial information you hold concerning the **client** and assess the **client's** creditworthiness before any significant increase in the total amount of credit.

15.4 In the event of you assigning to a third party your rights as lender in relation to a *regulated credit agreement*, you must inform the *client* of the assignment.

Rule 16: Appropriation of payments

16.1 Where you are entitled to payments from the same *client* in respect of two or more *regulated credit agreements*, you 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.

Rule 17: Consumer Credit Guidance

17.1 Where you undertake *credit-related regulated financial services activities*, you must have regard to any guidance issued by the **SRA** from time to time relating to such activities.

Supplemental notes

Made by the SRA Board on [date]

Made under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985, section 83 of the Legal Services Act 2007 and section 332 of the Financial Services and Markets Act 2000

Approved by the Financial Conduct Authority under section 332(5) of the Financial Services and Markets Act 2000 on [date] and by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007, on [date]

Commencing on [date] and replacing the SRA Financial Services (Conduct of Business) Rules 2001.