



QATAR FINANCIAL CENTRE  
**REGULATORY  
AUTHORITY**

# **Conduct of Business Rulebook (COND)**

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# Conduct of Business Rulebook (COND)

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## Chapter 1 Introduction to COND

### Part 1.1 Overview

#### 1.1.1 Overview of COND

The following notes provide an overview of this rulebook.

*Note 1* General application of chapters in COND

Chapter 2 (Obligations of all authorised firms) and chapter 3 (Financial promotions) contain the rules of widest application in *COND*. The rules in these chapters apply to an *authorised firm* conducting any kind of *regulated activity* in or from the *QFC*.

Chapter 4 (Conduct of investment business) applies to an *authorised firm* conducting *investment business* in or from the *QFC*. *Investment business* covers 7 different *regulated activities* carried on in relation to the *specified products* contained in the term *relevant investment*. *Insurance mediation business* in relation to most kinds of *long term insurance contracts* is a subset of *investment business* and is, therefore, covered by this chapter (see note 5).

Chapter 5 (Conduct of non-investment insurance mediation business) applies to an *authorised firm* conducting *insurance mediation business* in relation to *non-investment insurance contracts* in or from the *QFC*. This chapter applies to insurance intermediaries and *insurers* marketing and selling their own contracts directly.

Chapter 6 (Conduct of insurance business) covers certain aspects of the way in which *insurers* conduct *insurance business* in or from the *QFC*, namely, effecting insurance contracts in *execution-only transactions*, cancellations by *retail customers* and claims handling.

Chapter 7 (Conduct of deposit taking business) deals with *terms of business* for *deposit taking business*.

Chapter 8 (Customer dispute resolution scheme) contains provisions about the *customer dispute resolution scheme*.

*Note 2* Categories of client

The following terms are used to describe different categories of *client* in *COND*:

- *customer*
- *commercial customer*
- *business customer*
- *retail customer*
- *market counterparty*.

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Each of the terms is defined in division 1.2.A. The interrelated definitions of *client* and *customer* (and the various categories of *client* and *customer*) need to be understood when reading *COND*.

The regulatory protections in *COND* are built up in layers according to the vulnerability of the type of *client* in question. Chapters in *COND* are generally arranged in the following way:

- rules that *authorised firms* must follow when doing business with *clients*;
- rules that *authorised firms* must follow when doing business with *customers* ie *clients* that are not *market counterparties*;
- rules that *authorised firms* must follow when doing business with *retail customers* ie *customers* that are not *commercial customers* or *business customers*.

### Note 3 Regulated activities

As far as possible *COND* applies rules directly to *regulated activities* (see *FSR*, art 23). As an *authorised firm* will be aware from the terms of its authorisation the *regulated activities* it is authorised to carry on, it will usually be apparent which areas of *COND* apply to it. For example, a reference to ‘providing advice on investments’ refers to the *regulated activity* of *advising on investments*.

### Note 4 Types of business in *COND*

Chapters 2 and 3 apply to all types of business conducted by an *authorised firm*. By contrast, the application of chapters 4, 5, 6 and 7 to an *authorised firm* depends on the types of business it conducts. These chapters apply only to the following types of business:

- chapter 4—*investment business*
- chapter 5—*non-investment insurance mediation business*
- chapter 6—*insurance business*
- chapter 7—*deposit taking business*.

Under the *Financial Services Regulations* (the *FSR*), the business of an *authorised firm* consists of groups of *regulated activities* conducted in relation to certain *specified products* (see *FSR*, sch 3, pt 3). For example, *investment business* is defined as carrying on a range of *regulated activities* (including arranging deals, advising and dealing as principal or agent) in relation to a group of *specified products* collectively referred to as *relevant investments*. *Relevant investments* include the following products (but see note 5 in relation to *long term insurance contracts*):

*shares, debt instruments, warrants, securities receipts, units in a collective investment fund, options, futures, contracts for differences, long term insurance contracts, and rights in investments* relating to any of these products.

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Two kinds of *specified products*, *deposits* and *credit facilities*, do not fall into any of the types of business dealt with in chapters 4, 5 and 6. In carrying on business relating to *deposits* and *credit facilities*, an *authorised firm* is, therefore, subject to chapter 2 (General obligations of all authorised firms) and chapter 3 (Financial promotions), but not chapters 4, 5 or 6. (Chapter 7 also has provisions about *terms of business* for *deposit taking business*.)

The relationship between the 3 types of business covered by chapters 4, 5 and 6, *regulated activities* and *specified products* is illustrated in table 1.1.2. From the table, it can be seen that, for example, *investment business* (covered by chapter 4) applies to the following *regulated activities* that are conducted in relation to *relevant investments*:

- 4 *dealing in investments*
- 5 *arranging deals in investments*
- 8 *providing custody services*
- 9 *arranging provision of custody services*
- 10 *managing investments*
- 11 *advising on investments*
- 12 *operating a collective investment fund.*

It can be seen that *investment business* (chapter 4) does not apply to the other *regulated activities* at all and does not apply to any *regulated activity* that is conducted in relation to *specified products* that are not *relevant investments*.

**Table 1.1.2 Types of business, regulated activities and specified products**

|                             |   | Types of business        |   |                            |
|-----------------------------|---|--------------------------|---|----------------------------|
|                             |   | investment business      | non-investment<br>insurance mediation<br>business | insurance business         |
| <b>Regulated activities</b> | 1 <i>deposit taking</i>                       | -                        | -   | -                          |
|                             | 2 <i>effecting a contract of insurance</i>    | -                        | -   | all contracts of insurance |
|                             | 3 <i>carrying out a contract of insurance</i> | -                        | -   | all contracts of insurance |
|                             | 4 <i>dealing in investments</i>               | all relevant investments | non-investment<br>contracts of insurance          | -                          |

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|  |                          |                                       |   |
|--|--------------------------|---------------------------------------|---|
| 5 arranging deals in investments               | all relevant investments | non-investment contracts of insurance | - |
| 6 providing credit facilities                  | -                        | -                                     | - |
| 7 arranging the provision of credit facilities | -                        | -                                     | - |
| 8 providing custody services                   | all relevant investments | -                                     | - |
| 9 arranging provision of custody services      | all relevant investments | -                                     | - |
| 10 managing investments                        | all relevant investments | -                                     | - |
| 11 advising on investments                     | all relevant investments | non-investment contracts of insurance | - |
| 12 operating a collective investment fund      | all relevant investments | -                                     | - |

In the table, a dash ('-') indicates that a type of business does not apply at all to the relevant *regulated activity*. For example, *investment business* does not apply to the *regulated activity of deposit taking*.

### Note 5 Definition of relevant investment under COND

Under the *FSR*, sch 3, pt 3, relevant insurance contracts are either *general insurance contracts* or *long term insurance contracts*. *General insurance contracts* are divided into 18 categories and *long term insurance contracts* into 7 categories. Under the general *INAP* definition of **relevant investment** all *long term insurance contracts* are *relevant investments*.

*COND* takes a slightly different approach. For *COND*, not all *long term insurance contracts* are treated as *relevant investments*. Only *long term insurance contracts* that contain an investment or savings component are treated as *relevant investments* for *COND*.

*Pure protection contracts* other than *long term care insurance contracts* do not meet this requirement and are, therefore, grouped with *general insurance contracts* in the defined term *non-investment insurance contracts*.

The approach taken in *COND* is summarised in table 1.1.3. For *COND*, only those *long term insurance contracts* included in the non-shaded parts in table

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1.1.3 are treated as *relevant investments* in relation to conducting *investment business* and are called *life policies*.

**Table 1.1.3 Treatment of contracts of insurance**

| <b>Contract of insurance in COND</b>            |  |
|---|--|
| <i>general insurance contract</i>               | <i>long term insurance contract</i>  |
| Consists of any of the 18 categories in the FSR | Consists of any of the 7 categories in the FSR   |
|   | <i>pure protection contract</i>  |
|   | <i>long term care insurance contract</i>   |
| <i>non-investment insurance contract</i>        | <i>long term insurance contract that is a relevant investment for COND (a life policy)</i> |

## **Part 1.2 Basic concepts**

### **Division 1.2.A Clients, customers and market counterparties**

#### **1.2.1 Who is a *client*?**

A *client*, of an *authorised firm*, is a person to whom the firm (or an *approved representative*, or *non-QFC intermediary*, of the firm) provides, intends or wishes to provide or has provided a service or product in conducting a *regulated activity*, and includes a *collective investment fund* even if it does not have a separate legal personality, but does not include a beneficiary of a trust.

#### **1.2.2 Categories of *client***

A *client* may be—

- (a) a *customer*; or
- (b) a *market counterparty*.

#### **1.2.3 Categories of *customer***

- (1) For *insurance business* and *insurance mediation business* in relation to *non-investment insurance contracts*, a *customer* is—
  - (a) a *commercial customer*; or
  - (b) a *retail customer*.
- (2) For any other business, a *customer* is—
  - (a) a *business customer*; or
  - (b) a *retail customer*.

#### **1.2.4 Who is a *commercial customer*?**

- (1) A *commercial customer*, in relation to an *authorised firm*, is—
  - (a) a *person* other than an individual; or

- (b) an individual who is acting for purposes of the individual's trade, business or profession (if any); or
- (c) a *client* of the firm who is classified by the firm as a commercial customer under rule 2.3.2 (Client classification—opting up);

but does not include a *market counterparty*.

- (2) However, if a *client* of an *authorised firm* is classified by the firm as a commercial customer only in relation to particular *regulated activities*, the *client* is a *commercial customer* only for the purposes of those activities.

#### **1.2.5 Who is a *business customer*?**

- (1) A *business customer*, in relation to an *authorised firm*, is—
  - (a) a *collective investment fund*; or
  - (b) a *body corporate* that has, or has had at any time during the previous 2 years, called-up share capital or net assets of at least US \$5 million (or its equivalent in any other currency at the relevant time); or
  - (c) a *body corporate* with a holding company or subsidiary that has, or has had at any time during the previous 2 years, called-up share capital or net assets of at least US \$5 million (or its equivalent in any other currency at the relevant time); or
  - (d) a partnership or unincorporated association that has, or has had at any time during the previous 2 years, net assets of at least US \$5 million (or its equivalent in any other currency at the relevant time) and, for a limited partnership, calculated without deducting loans owing to any of the partners; or
  - (e) a trustee of a trust that has, or has had at any time during the previous 2 years, assets of at least US \$5 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and investments forming part of the trust's assets, but before deducting its liabilities; or

(f) a *client* of the firm who is classified by the firm as a business customer under rule 2.3.2 (Client classification—opting up);

but does not include a *market counterparty*.

(2) However, if a *client* of an *authorised firm* is classified by the firm as a business customer only in relation to particular *regulated activities*, the *client* is a *business customer* only for the purposes of those activities.

### 1.2.6 Who is a *retail customer*?

(1) For *insurance business* and *insurance mediation business* in relation to *non-investment insurance contracts*, a ***retail customer***, in relation to an *authorised firm*, is a *client* of the firm who is not a *commercial customer* in relation to the firm.

(2) For any other business, a ***retail customer***, in relation to an *authorised firm*, is a *client* of the firm who is not a *business customer* in relation to the firm.

### 1.2.7 Who is a *market counterparty*?

A ***market counterparty***, in relation to an *authorised firm*, is a *client* of the firm that is any of the following:

(a) an *approved representative*, or *non-QFC intermediary*, of the firm;

(b) an *authorised firm* or *regulated financial institution*;

(c) an *entity* in the same *group* as an *authorised firm* or *regulated financial institution*;

(d) an *eligible clearing house* or *eligible exchange*;

(e) a government, government agency, or central bank or other national monetary authority, of any *jurisdiction*;

(f) a state investment body, or a body charged with, or intervening in, management of the public debt;



- (g) a supranational organisation if the members of the organisation are *jurisdictions*, central banks or national monetary authorities.

## **Chapter 2            Obligations of all authorised firms**

### **Part 2.1            Application and language of disclosure**

#### **2.1.1            Application—ch 2**

This chapter applies to all *authorised firms* carrying on *regulated activities* in or from the *QFC*, except as otherwise provided in this chapter.

#### **2.1.2            Language of disclosure information**

An *authorised firm* must ensure that all information required by *COND* to be provided to a *retail customer* is provided in a language that the customer can understand.

## Part 2.2                      Persons acting for authorised firms

### 2.2.1            Persons acting for authorised firms—investment business etc

- (1) This rule applies in relation to an *authorised firm* conducting business (other than *insurance mediation business*) in or from the *QFC*.
- (2) The *authorised firm* must not allow an individual to perform a *customer facing function* for it in or from the *QFC* unless the individual is an employee of the firm who is an *approved individual*.
- (3) The *authorised firm* must not allow a *person* to act as its intermediary in the *State* outside the *QFC*.
- (4) To remove any doubt, the definition of *employee* in *INAP*, glossary does not apply to this rule.

*Note*        In this rule, ‘employee’ has its ordinary (undefined) meaning.

### 2.2.2            Persons acting for authorised firms—insurance mediation business

- (1) This rule applies in relation to an *authorised firm* conducting *insurance mediation business* in or from the *QFC*.
- (2) The *authorised firm* must not allow an individual to perform a *customer facing function* for it in or from the *QFC* unless the individual is—
  - (a) an employee of the firm who is an *approved individual*; or
  - (b) an *approved representative* of the firm.

*Note*        *Approved representative* is defined in r 2.2.3.

- (3) The *authorised firm* must not allow—
  - (a) a *person* that is not a *body corporate* to act as its intermediary in the *State* outside the *QFC*; or

- (b) a *body corporate* to act as its intermediary in the *State* outside the *QFC* unless—
  - (i) the *body corporate* is a *non-QFC intermediary* of the firm; and
  - (ii) it is lawful for the *body corporate* to act as its intermediary.

*Note* *Non-QFC intermediary* is defined in r 2.2.5.

- (4) To remove any doubt, the definition of *employee* in *INAP*, glossary does not apply to this rule.

*Note* In this rule, ‘employee’ has its ordinary (undefined) meaning.

### 2.2.3 **Approved representative—definition**

- (1) An individual is an *approved representative* of an *authorised firm* if—
  - (a) the individual is an *approved individual* who is not an employee of the firm; and
  - (b) the individual is authorised under a contract (other than a contract of employment) with the firm to carry out a *customer facing function* for the firm in or from the *QFC*; and
  - (c) the firm has agreed in the contract to accept responsibility for every act or omission of the individual in carrying out (or purporting to carry out) a *customer facing function* for the firm.
- (2) A contract mentioned in subrule (1) is an *approved representative contract*.
- (3) An *authorised firm* must not enter into an *approved representative contract* with an individual if the individual is a party to an *approved representative contract* in force with another *authorised firm*.
- (4) To remove any doubt, the definition of *employee* in *INAP*, glossary does not apply to this rule.

*Note* In this rule, ‘employee’ has its ordinary (undefined) meaning.

#### **2.2.4 Approved representative—liability of authorised firm**

An *authorised firm* is liable for every act or omission of an *approved representative* of the firm in carrying out (or purporting to carry out) a *customer facing function* for the firm to the same extent as it would be liable if the act or omission were that of the firm itself.

#### **2.2.5 Non-QFC intermediary—definition**

- (1) A *body corporate* is a ***non-QFC intermediary*** of an *authorised firm* if—
  - (a) the *body corporate* is authorised under a contract with the firm to act as an intermediary for the firm in the *State* outside the *QFC*; and
  - (b) the firm has agreed in the contract to accept liability to the *client* for every act or omission of the *body corporate* directly applicable to the activity the *body corporate* undertakes (or purports to undertake) as an intermediary for the firm in the *State* outside the *QFC*.
- (2) A contract mentioned in subrule (1) is a ***non-QFC intermediary contract***.
- (3) An *authorised firm* must not enter into a ***non-QFC intermediary contract*** with a *body corporate* unless—
  - (a) it is lawful for the *body corporate* to act as its intermediary in the *State* outside the *QFC*; and
  - (b) every law, rule or regulation of the *State* applying in relation to the entering into of the contract is complied with.

#### **2.2.6 Non-QFC intermediary—liability of authorised firm etc**

- (1) An *authorised firm* must ensure that every *non-QFC intermediary* of the firm, when acting as an intermediary for the firm in the *State* outside the *QFC*, complies with—

- (a) those laws, rules or regulations of the *State* directly applicable to the activity the intermediary undertakes as an intermediary for the firm; and
  - (b) the requirements of *COND* that would apply to it if—
    - (i) it were the firm; and
    - (ii) it were acting in or from the *QFC*.
- (2) An *authorised firm* is liable to the *client* for every act or omission of a *non-QFC intermediary* directly applicable to the activity the intermediary undertakes (or purports to undertake) as an intermediary of the firm in the *State* outside the *QFC* to the same extent as it would be liable if—
- (a) the act or omission were that of the firm itself; and
  - (b) the firm were acting in or from the *QFC*.
- (3) This rule does not imply that a *non-QFC intermediary* of an *authorised firm* is carrying on business in or from the *QFC* in acting as an intermediary for the firm.

**2.2.7 Approved representative and non-QFC intermediary—  
handling client money or insurance money**

- (1) An *authorised firm* must take reasonable steps to ensure that *client money* received by an *approved representative* or *non-QFC intermediary* of the firm is paid into a *client bank account* of the firm as soon as possible after it is received, but within 1 *business day* after the day it is received.
- (2) An *authorised firm* must take reasonable steps to ensure that *insurance money* received by an *approved representative* or *non-QFC intermediary* of the firm is paid into an *insurance bank account* of the firm as soon as possible after it is received, but within 1 *business day* after the day it is received.

**2.2.8 Approved representative and non-QFC intermediary—  
recordkeeping**

An *authorised firm* must keep a copy of each *approved representative contract* and *non-QFC intermediary contract* into which it enters for at least 6 years after the day the contract ends.

## **Part 2.3 Client classification**

### **2.3.1 Client classification—general obligation**

- (1) Before conducting business with or for a *client*, an *authorised firm* must take reasonable steps to establish whether the *client* is, and then classify the *client* as—
  - (a) a *retail customer*; or
  - (b) for *insurance business* or *insurance mediation business* in relation to *non-investment insurance contracts*—a *commercial customer*; or
  - (c) for other business—a *business customer*; or
  - (d) a *market counterparty*.
- (2) If it is not clear to an *authorised firm* whether a particular *client* is a *retail customer* or a *commercial customer* or *business customer*, the firm must classify the *client* as a *retail customer*.
- (3) If an *authorised firm* is dealing with a *client* who is an individual in relation to a *contract of insurance* that would cover the *client* in both a private and business capacity, the firm must classify the *client* as a *retail customer*.
- (4) If an *authorised firm* takes reasonable steps to classify a *client* as required by, and in accordance with, this chapter, and treats the *client* in accordance with the classification, the firm does not breach any other provision of *COND* or any provision of *ASET* so far as the breach arises only from inappropriate classification of the *client*.
- (5) To remove any doubt, subrule (3) is subject to rule 2.3.2.

### **2.3.2 Client classification—opting up**

- (1) If a *client* of an *authorised firm* would apart from this rule be required to be classified as a *retail customer* and the firm complies with this rule in relation to the *client*, the firm may classify the *client* as a commercial customer or business customer (or both) in relation to all *regulated activities* or particular *regulated activities*.



- (2) The *authorised firm* may classify the *client* as a business customer or commercial customer only if—
- (a) both of the following subparagraphs are satisfied:
    - (i) the *client* either—
      - (A) is an *employee* of an *authorised firm* or *regulated financial institution*; or
      - (B) has at least US\$1 million in liquid assets (i.e. cash, securities or other financial instruments) and has provided the *authorised firm* with written confirmation of this fact; and
    - (ii) the firm is satisfied, after careful assessment in accordance with subrule (4), that the *client* has sufficient knowledge, experience and understanding of relevant financial markets to justify being dealt with by the firm without the benefit of the protections the *regulatory system* provides for *retail customers*; or
  - (b) the *client* is a private trust or other similar arrangement in which each of the *persons* entitled to the ultimate beneficial interest in the trust or arrangement could be classified by the firm as a business customer or commercial customer under paragraph (a) if the *person* were a *client*.
- (3) The *authorised firm* may classify the *client* as a business customer or commercial customer only if—
- (a) the firm has given the *client* a written notice that explains—
    - (i) the basis on which the *authorised firm* is proposing to classify the *client* as a business customer or commercial customer; and
    - (ii) the protections provided by the *regulatory system* that the *client* will lose if classified as a business customer or commercial customer; and

- (b) the firm has given the *client* sufficient time after receiving the notice to consider the implications of being classified as a business customer or commercial customer; and
  - (c) the *client* has agreed in writing to being classified as a business customer or commercial customer.
- (4) In assessing for subrule (2) (a) (ii) whether the *client* has sufficient knowledge, experience and understanding of relevant financial markets, the *authorised firm* must have regard to all of the following:
- (a) the *client's* knowledge and understanding of relevant financial markets and the risks involved in participating in them;
  - (b) the length of time that the *client* has been active in the financial markets, the frequency of dealings in them and the extent to which the *client* has relied on the firm's advice in the dealings;
  - (c) whether the *client* has been employed, or otherwise professionally involved, in the financial markets and for how long;
  - (d) the size and nature of *transactions* that have been undertaken by or for the *client* in the financial markets;
  - (e) the reliance the *client* will place on the independent advice or judgment of another *authorised firm* or *regulated financial institution* in relation to the *regulated activities* to which the proposed classification relates.
- (5) Without limiting subrule (3) (a), the written notice given to the *client* must—
- (a) tell the *client* about the provisions of *COND* that will not apply to the *client* because of the classification of the *client* as a business customer or commercial customer; and
  - (b) tell the *client* about the provisions of *COND* that can be modified in their application to the *client* as a business customer or commercial customer.

### 2.3.3 Client classification—customers' agents

- (1) This rule applies if an *authorised firm* is aware that a *person* with or for whom it is conducting *investment business* (the *agent*) is acting as agent for another *person* (the *underlying customer*) in relation to the business.
- (2) The agent (and not the underlying customer) is taken, for the purposes of the requirements of *COND* and *ASET*, to be the *client* of the *authorised firm* in relation to the business, if—
  - (a) the agent is another *authorised firm*; or
  - (b) the agent is a *regulated financial institution*; or
  - (c) the avoidance of duties that the *authorised firm* would otherwise have to the underlying customer is not the main purpose of the arrangements between the parties.
- (3) Subrule (2) does not apply if the *authorised firm* has agreed with the agent in writing to treat the underlying customer as its *client* for the purposes of the requirements of *COND* and *ASET*.
- (4) However, if an agreement mentioned in subrule (3) applies in relation to 2 or more underlying customers for whom the agent is acting, the *authorised firm* may discharge any requirement of *COND* or *ASET* in relation to the underlying customers by discharging the requirement in relation to the agent and telling the agent that the requirement is being satisfied in relation to each underlying customer.
- (5) Subrule (4) does not apply in relation to the following documents, and the following provisions must be complied with separately in relation to each underlying customer:
  - (a) statements under rule 4.3.1 (c) (Retail investment advice—general requirements);
  - (b) confirmation notes under rule 4.4.1 (Confirmation notes—provision requirement);
  - (c) periodic statements under rule 4.4.7 (Periodic statements—provision requirement).

- (6) To the extent that subrule (2) does not apply because of subrules (3) to (5), the underlying customer and not the agent is, for the purposes of the requirements in *COND* and *ASET*, the *client* of the *authorised firm* in relation to the *investment business*.
- (7) To remove any doubt, this rule does not affect the liability of an *authorised firm* under rule 2.2.4 (Approved representative—liability of authorised firm) or rule 2.2.6 (Non-QFC intermediary—liability of authorised firm etc).

**Guidance for r 2.3.3**

*Authorised firms* are reminded that rule 2.3.3 does not relieve them of any obligation under the *AML Regulations* relating to the underlying customer.

**2.3.4 Client classification—systems and controls**

- (1) An *authorised firm's* systems and controls must include appropriate checks verifying—
  - (a) any *client* classification that it makes under this part; and
  - (b) the continuing appropriateness of the classification, if the firm conducts business for the *client* on an ongoing basis.
- (2) Without limiting subrule (1) (b), the systems and controls must provide for the regular, at least annual, review of the *client* classification if the firm conducts business for the *client* on an ongoing basis.

**2.3.5 Client classification—recordkeeping**

- (1) An *authorised firm* must make a record of each *client* classification made under this part.
- (2) The record must include sufficient information to support the classification.
- (3) The record must also include information about—
  - (a) the checks that were made to verify the classification as required by rule 2.3.4; and

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- (b) the reviews that were made to verify the continuing appropriateness of the classification as required by that rule.
- (4) The *authorised firm* must keep the record for at least 6 years after the day the firm ceases to conduct business with or for the *client*.

## **Part 2.4                      Reliance on others and exclusion or restriction of liability**

### **2.4.1            Reliance on information provided by others**

- (1) An *authorised firm* is taken to comply with a provision of *COND* that requires it to obtain information if it can show that—
  - (a) it relied on information provided to it in writing by another *person*; and
  - (b) it was reasonable for it to rely on the information.
- (2) For subrule (1) (b), it is reasonable for the *authorised firm* to rely on the information if—
  - (a) it believes on reasonable grounds that the *person* who provided the information was competent to provide it; and
  - (b) it was not aware, and ought not reasonably to have been aware, of anything that would give it reasonable grounds to question the accuracy of the information.

### **2.4.2            Reliance on others to give information to customers**

If a provision of *COND* requires an *authorised firm* to give information to a *customer*, the firm must give the information directly to the *customer* and not to another *person*, unless it has a written instruction from the *customer* requiring or allowing it to give the information to the other *person*.

### **2.4.3            Excluding or restricting liability**

- (1) An *authorised firm* must not, in any written or oral communication in relation to *regulated activities* carried on with or for a *customer*—
  - (a) seek to exclude or restrict any duty or liability it may have to the *customer* under the *regulatory system*; or
  - (b) rely on any exclusion or restriction of any duty or liability it may have to the *customer* under the *regulatory system*.

- (2) An *authorised firm* must not, in any written or oral communication in relation to *regulated activities* carried on with or for a *retail customer*—
- (a) seek to exclude or restrict any duty or liability that it has to the *retail customer* under the law applying in the *QFC* otherwise than under the *regulatory system*, unless it is reasonable to do so; or
  - (b) rely on any exclusion or restriction of any duty or liability that it has to the *retail customer* under the law applying in the *QFC* otherwise than under the *regulatory system*, unless it is reasonable to do so.

## **Part 2.5 Conflicts, material interests and inducements**

### **Division 2.5.A Conflicts and material interests**

#### **2.5.1 Conflicts and material interests—identifying and managing**

- (1) An *authorised firm* must establish systems and controls to identify and manage actual and potential conflicts of interest and *material interests*.
- (2) The systems and controls must ensure that the *authorised firm's clients* are not treated unfairly or prejudiced because of any conflict of interest or *material interest*.
- (3) An *authorised firm* must manage a conflict of interest or *material interest* by taking 1 or more of the following steps:
  - (a) establishing and maintaining an effective *Chinese wall*;
  - (b) relying on a written policy of independence that requires an *employee* to disregard conflicts of interest and *material interests* when advising a *client* or exercising discretion;
  - (c) separately supervising *employees* whose main functions involve carrying out activities for, or providing services to, *clients* whose interests may conflict with those of the firm;
  - (d) removing any direct link between the remuneration of *employees* mainly engaged in an activity and the remuneration of, or revenues generated by, different *employees* mainly engaged in another activity, if a conflict of interest may arise in relation to the activities;
  - (e) establishing measures to prevent or limit any *person* from exercising inappropriate influence over how an *employee* carries out services or activities;
  - (f) establishing measures to prevent or control the simultaneous or sequential involvement of an *employee* in separate services or



activities if the involvement may impair the proper management of conflicts of interest;

- (g) taking alternative or additional steps necessary and appropriate to manage the conflict of interest or *material interest*.

### **2.5.2 Conflicts and material interests—decline to act or disclose and notify**

- (1) An *authorised firm* must decline to act for a *client* if it has a conflict of interest or *material interest* and cannot manage the conflict of interest or *material interest* using a step mentioned in rule 2.5.1 (3).
- (2) Before an *authorised firm* advises a *client* about a *transaction* or before it *deals in investments* for a *client*, the firm must—
  - (a) disclose any conflict of interest or *material interest* that it knows about; and
  - (b) notify the client of the steps it has taken to manage the conflict of interest or *material interest* in accordance with rule 2.5.1 (3); and
  - (c) take reasonable steps to ensure that the *client* does not object to the firm's management of the conflict of interest or *material interest*.
- (3) For subrule (2), if the *client* is a *customer*, a disclosure and notification may be made in the *authorised firm's terms of business* for the *customer*.

### **2.5.3 Conflicts and material interests—effect of Chinese wall**

For a provision of *COND* that applies to an *authorised firm* only to the extent that it has knowledge of something, the firm is not taken to have knowledge if none of the relevant individuals involved on its behalf has knowledge of the thing because of a *Chinese wall*.

## **Division 2.5.B Inducements**

### **2.5.4 Inducements—all businesses**

- (1) An *authorised firm* must ensure that neither it, nor any of its *employees*—
  - (a) offers, gives, solicits or accepts any inducement; or
  - (b) directs or refers any actual or potential business to another *person* on its own initiative or on the instructions of an *associate*;if this is likely to conflict to a material extent with any duty that it owes to its *customers*.
- (2) An *authorised firm's* systems and controls must include policies and procedures to ensure compliance with subrule (1).
- (3) An *authorised firm* must ensure that all its *employees* are provided with details of the firm's current policy and procedures regarding gifts, referrals and inducements.

### **2.5.5 Inducements—packaged products**

- (1) This rule applies to an *authorised firm* if the firm is required to disclose *commissions* (or their equivalent) in accordance with part 4.2 (Investment business—initial client contact) to a *retail customer* in relation to the sale of a *packaged product*.
- (2) The *authorised firm* must not enter into, and must take reasonable steps to ensure that no *person* acting on its behalf enters into any of the following arrangements with another *person* in relation to a *packaged product*:
  - (a) volume overrides, if *commission* paid in relation to several transactions is more than a simple multiple of the *commission* payable in relation to a single transaction of the same kind;
  - (b) an arrangement to pay *commission* that is increased in excess of the amount disclosed to the *retail customer*, unless the

- increase is attributable to an increase in the premiums or contributions payable by the customer;
- (c) an agreement to indemnify the payment of *commission* on terms that would or might give an additional financial benefit to the recipient if the *commission* became repayable;
  - (d) an arrangement to pay *commission* otherwise than to the *authorised firm* responsible for a sale, unless—
    - (i) the *authorised firm* responsible for the sale has passed on its right to receive the *commission* to the recipient; or
    - (ii) the recipient is another *authorised firm* that has given advice on investments to the *retail customer* after the sale; or
    - (iii) the recipient is another *authorised firm* and the *commission* is paid after the sale of a *packaged product* by the first *authorised firm* in response to a direct offer *financial promotion* communicated by that *authorised firm* to a *retail customer* of the recipient *authorised firm*.
- (3) Subrule (2) (a) and (c) does not apply in relation to arrangements between *persons* in the same *group*.

#### **2.5.6 Inducements—financial assistance by product providers**

- (1) This rule applies in relation to an *authorised firm* (a ***relevant firm***) that holds itself out as *advising on investments* to *retail customers* in relation to *packaged products*.
- (2) A *product provider* must not acquire a direct or indirect holding in the capital or voting power of a relevant firm, or provide credit to a relevant firm, unless—
  - (a) the *product provider* and the relevant firm are in the same immediate *group*; or
  - (b) for the provision of credit—the credit provided is for *commission* owing from the relevant firm to the *product*

*provider* under an indemnity commission clawback arrangement; or

- (c) all the conditions mentioned in subrule (5) are satisfied.
- (3) A *product provider* must take reasonable steps to ensure that its *associates* do not do anything that would result in it contravening subrule (2).
- (4) A relevant firm must not do anything that would result in a *product provider* contravening subrule (2).
- (5) For subrule (2), the following conditions must be satisfied:
  - (a) the holding is acquired, or credit is provided, on commercial terms, that is, terms objectively comparable to terms on which an independent *person* unconnected to a *product provider* would, taking into account all relevant circumstances, be willing to acquire the holding or provide credit;
  - (b) the relevant firm has reliable written evidence that paragraph (a) is satisfied;
  - (c) there are no arrangements, in relation to the holding or provision of credit, relating to the channelling of business from the relevant firm to the *product provider*;
  - (d) the *product provider* cannot, and none of its *associates* can, because of the holding or provision of credit, exercise any influence over the advice given by the relevant firm in relation to *packaged products*.
- (6) For this rule, any holding of, or credit provided by, a *product provider's associate* is taken to be held by, or provided by, the *product provider*.

### **2.5.7 Soft dollar agreements etc—inducement exemption**

- (1) This rule applies if, in the course of conducting *investment business*, an *authorised firm* pays for goods or services received by the firm or an *associate* under a *soft dollar agreement* or *bundled brokerage*

*arrangement* using *commissions* generated by the *execution* of *transactions* on behalf of *customers* for whom it acts.

- (2) Payment for, or receipt of, the goods or services is not an inducement that breaches rule 2.5.4 (1) (Inducements—all businesses) if—
- (a) the goods or services are directly relevant to, and can reasonably expect to be used to assist in, the provision to the *authorised firm's customers* of any of the following:
    - (i) investment management services;
    - (ii) advice on dealing in, or the value of, any *relevant investment*;
    - (iii) custody services relating to *relevant investments* belonging to, or managed for, *customers*;
    - (iv) services relating to the valuation or performance measurement of portfolios; and
  - (b) the goods and services do not take the form of, or include, cash or any other direct financial benefit; and
  - (c) the firm has undertaken a thorough assessment of the goods and services it receives under the agreement or arrangement mentioned in subrule (1) to ensure that it provides value for money to the firm's *customers*, including, for a *bundled brokerage arrangement*, taking reasonable steps to ensure that—
    - (i) the services provided by a broker who is a party to the arrangement are competitive, with no comparative price disadvantage, and take into account the interests of the firm's *customers*; and
    - (ii) if a broker who is a party to the arrangement acts as principal—*commission* paid under the arrangement will be sufficient to cover the value of the goods or services to be received and the costs of *execution*; and

- (d) the firm has made adequate prior and periodic disclosure under rule 2.5.8 and rule 2.5.9 (Soft dollar agreements etc—periodic disclosure).

### **2.5.8 Soft dollar agreements etc—prior disclosure**

- (1) This rule applies if—
  - (a) an *authorised firm*, or a member of its *group*, has a *soft dollar agreement* or *bundled brokerage arrangement* with another *person*; and
  - (b) the firm is proposing to enter into a *transaction* for a *customer*.
- (2) Before the *authorised firm* enters into the *transaction*, the firm must tell the *customer* in writing about—
  - (a) the existence of the *soft dollar agreement* or *bundled brokerage arrangement*; and
  - (b) the firm's or, if relevant, its *group's* policy, relating to *soft dollar arrangements* and *bundled brokerage arrangements*.

*Note* Rule 2.5.8 (2) can be satisfied by providing the relevant information in the firm's *terms of business* given to the customer (see r 4.2.5).

### **2.5.9 Soft dollar agreements etc—periodic disclosure**

- (1) This rule applies if—
  - (a) an *authorised firm*, or a member of its *group*, has a *soft dollar agreement* or *bundled brokerage arrangement* with another *person*; and
  - (b) the firm conducts *transactions* for a *customer*.
- (2) The *authorised firm* must—
  - (a) provide, at least annually, to the *customer* the following information covering the period since the firm last reported to the *customer* or, if a previous report has not been made to the *customer*, since the *authorised firm* first conducted *transactions* for the *customer*:

- (i) the percentage, of the total commission paid under the *soft dollar agreement* or *bundled brokerage arrangement*, that is paid by or at the direction of the firm or other members of its *group*;
  - (ii) the value, on a cost price basis, and expressed as a percentage of the total *commission* paid by or at the direction of the firm or other members of its *group*, of goods and services received by the firm under the agreement or arrangement;
  - (iii) a summary of the goods and services received by the firm under the agreement or arrangement;
  - (iv) a list of the brokers that are parties to the agreement or arrangement;
  - (v) the total *commission* paid from the portfolio of the *customer*; and
- (b) at least annually, explain to the *customer*—
- (i) details of the firm’s policy or, if relevant, its *group’s* policy, relating to *soft dollar agreements* or *bundled brokerage arrangements* for the forthcoming period, which must not exceed 1 year; or
  - (ii) state that its, or, if relevant, its *group’s* policy has not changed; and
- (c) if a material change is made in the firm’s policy relating to *soft dollar agreements* or *bundled brokerage arrangements*—the firm must explain the change to the *customer*; and
- (d) if the goods and services received by the firm under the agreement or arrangement are expected to assist only in the conduct of *investment business* with or for some *customers* and the *customer* is not one of those *customers*—explain this to the *customer*.

### **2.5.10 Inducements—recordkeeping**

- (1) An *authorised firm* must—
  - (a) make records of each assessment it undertakes to ensure compliance with rule 2.5.4 (1) (Inducements—all businesses); and
  - (b) keep the records for at least 6 years after the day the assessment is completed.
- (2) An *authorised firm* must—
  - (a) make records of—
    - (i) the terms of each *soft dollar agreement* or *bundled brokerage arrangement* to which it or an *associate* is a party; and
    - (ii) each assessment it undertakes under rule 2.5.7 (2) (c) (Soft dollar agreements etc—inducement exemption) in relation to a *soft dollar agreement* or *bundled brokerage arrangement*; and
    - (iii) each disclosure made by it under rule 2.5.8 (Soft dollar agreements etc—prior disclosure) and rule 2.5.9 (Soft dollar agreements etc—periodic disclosure) in relation to a *soft dollar agreement* or *bundled brokerage arrangement*; and
    - (iv) each payment of *commission*, and the nature of all goods or services, received by it or an *associate* under a *soft dollar agreement* or *bundled brokerage arrangement*; and
  - (b) keep the records in relation to an agreement or arrangement for at least 6 years after the day it ends.



## Part 2.6 Customer complaints

### 2.6.1 Customer complaints—internal procedures

- (1) An *authorised firm (A)* must establish and operate appropriate and effective written internal complaint-handling procedures to ensure that—
  - (a) complaints, whether oral or written, made by *customers* in relation to its conduct of *regulated activities*, are dealt with fairly, efficiently, and with due diligence and consideration; and
  - (b) complaints that it receives from *customers* about the conduct of *regulated activities* by another *authorised firm (B)* are referred to B, if A markets (or has marketed) B's financial services or A's financial services are marketed by B.
- (2) The internal complaint-handling procedures must provide for all of the following:
  - (a) receiving complaints;
  - (b) responding to complaints;
  - (c) meeting any service standards in relation to complaints received in accordance with this part;
  - (d) referring complaints to other *authorised firms*;
  - (e) the appropriate investigation of each complaint by a *person* of sufficient competence who was not directly involved in the act or omission the subject of the complaint;
  - (f) the *person* responsible for responding to a complaint having authority to settle the complaint (including offering redress if appropriate) or having ready access to someone who has the necessary authority;
  - (g) responses to a complaint adequately addressing the subject matter of the complaint and, if the complaint is upheld, offering appropriate redress;

- (h) telling complainants in writing about their right to go to the *customer dispute resolution scheme* if relevant.
- (3) An authorised firm must—
  - (a) publish details of its internal complaint-handling procedures; and
  - (b) on request, give a copy of the published details to a *customer*; and
  - (c) give a copy of these published details automatically to a *customer* when it receives a complaint from the *customer* (unless the complaint is resolved by close of business on the next *business day*); and
  - (d) display in each of its sales offices to which *customers* have access a notice indicating that it is covered by the *customer dispute resolution scheme*.

### **2.6.2 Customer complaints—customer redress**

- (1) This rule applies if—
  - (a) an *authorised firm* receives a complaint from a *customer* about the conduct of its *regulated activities*; and
  - (b) having considered the complaint, the firm decides that redress is appropriate.
- (2) The authorised firm must—
  - (a) provide the *customer* with fair compensation, financial or otherwise, for any acts or omissions for which it was responsible; and
  - (b) give effect to any offer of redress accepted by the *customer*.

### **2.6.3 Customer complaints—service standards for retail customers**

- (1) This rule applies if—

- (a) an *authorised firm* receives a complaint from a *retail customer* about the conduct of its *regulated activities*; and
  - (b) the complaint either—
    - (i) relates to an activity of the firm to which the *customer dispute resolution scheme* applies; or
    - (ii) involves an allegation that the complainant suffered, or may suffer, financial loss, material distress or material inconvenience; and
  - (c) the complaint has not been resolved by close of business on the *business day* after the day it is received.
- (2) Within 5 *business days* after the day the complaint is received, the *authorised firm* must give the complainant a written acknowledgement (see subrule (5)).
- (3) Within 4 weeks after the day the complaint is received, the *authorised firm* must give the complainant either—
- (a) a final response (see subrule (6)); or
  - (b) a written response explaining why it has not been able to resolve the complaint and indicating when it will contact the complainant again about the complaint.
- (4) Within 8 weeks after the day the complaint is received, the *authorised firm* must give the complainant either—
- (a) a final response (see subrule (6)); or
  - (b) a written response that—
    - (i) explains that the firm has not been able to make a final response, gives reasons for the further delay and indicates when it expects to provide a final response; and
    - (ii) tells the complainant that the complainant may refer the complaint to the *customer dispute resolution scheme* if the complainant is dissatisfied with the delay.
- (5) The acknowledgement mentioned in subrule (2)—

- (a) must give the name or job title of the individual handling the complaint for the *authorised firm*; and
  - (b) must give details of the firm's internal complaint-handling procedures; and
  - (c) may be combined with a final response if the firm can provide the response within 5 *business days* after the day the complaint is received.
- (6) The final response mentioned in subrules (3), (4) and (5) must—
- (a) do 1 of the following:
    - (i) accept the complaint and, if appropriate, offer redress;
    - (ii) offer redress without accepting the complaint;
    - (iii) reject the complaint and give reasons for rejecting it; and
  - (b) tell the complainant that the complainant may refer the complaint to the *customer dispute resolution scheme*, if the complainant is dissatisfied with the final response.
- (7) The *authorised firm* need not comply with subrule (3) or (4) if—
- (a) before the end of the period mentioned in the subrule, the complainant has accepted, in writing, the firm's response; and
  - (b) the response had told the complainant that the complainant may refer the complaint to the *customer dispute resolution scheme* if the complainant is dissatisfied with the response.
- (8) For this rule, if the *authorised firm* receives the complaint on a day other than a *business day*, or on a *business day* after close of business, the complaint is taken to have been received by the firm on the next *business day*.

#### **2.6.4 Customer complaints—referring complaints to other firms**

- (1) If an *authorised firm* is satisfied on reasonable grounds that another *authorised firm* may be solely, jointly or partly responsible for the

act or omission alleged in a complaint made by a *customer*, it may refer all or part of the complaint to the other firm.

- (2) However, the *authorised firm* must—
  - (a) make any referral to the other *authorised firm* promptly, but no later than 5 *business days* after the day it became satisfied that the other *authorised firm* may be solely, jointly or partly responsible for the act or omission the subject of the complaint; and
  - (b) make a referral using a durable medium; and
  - (c) tell the complainant in writing, in the final response or otherwise, about the referral and the other firm's contact details; and
  - (d) unless it is satisfied that the other firm may be solely responsible for the act or omission the subject of the complaint, continue to comply with the requirements of *COND* in relation to the complaint.
- (3) If an *authorised firm* receives a complaint referred to it under subrule (1), the complaint is taken for *COND*:
  - (a) to have been made directly to the firm by the *customer*; and
  - (b) to have been received by it when the referral was received.

### **2.6.5 Customer complaints—recordkeeping**

- (1) An *authorised firm* must make records of every complaint it receives from a *customer* and how it is handled.
- (2) The records must include all of the following:
  - (a) if the complaint is in writing—the complaint;
  - (b) if the complaint is oral—details about the nature of the complaint;
  - (c) the name of the complainant;
  - (d) the name of the individual who investigated the complaint;

- (e) any correspondence between the firm and the complainant, including details of any redress offered by the firm;
  - (f) if applicable, the steps the firm has taken to remedy a recurring or systemic problem revealed by the complaint.
- (3) The records must be kept for at least 6 years after the day the complaint is received.

**2.6.6 Cooperation with staff of the customer dispute resolution scheme**

*An authorised firm must cooperate fully with the customer dispute resolution scheme in the handling of complaints against the firm.*

## Part 2.7 Restitution orders

### 2.7.1 Restitution orders for contravention of relevant requirements

- (1) A private person may apply to the *Court* for a restitution order if the person suffers loss or damage as a result of a contravention by an *authorised firm* of a *relevant requirement* in relation to *regulated activities*.

*Note* This rule is made under *FSR*, art 65.

- (2) In this rule:

*private person* means—

- (a) an individual, except when acting in the course of carrying on any *regulated activity*; or
- (b) any other *person*, except when acting in the course of carrying on business of any kind.

## **Part 2.8                      General recordkeeping obligation**

### **2.8.1            General recordkeeping obligation**

- (1) An *authorised firm* must make the records necessary—
  - (a) to enable it to comply with—
    - (i) *COND*; and
    - (ii) the other provisions of the law applying to it in the *QFC*; and
  - (b) to demonstrate at any time whether compliance has been achieved.
- (2) An *authorised firm* must keep records made for subrule (1) for at least 6 years after they are made.



## Chapter 3 Financial promotions

### Part 3.1 Financial promotions—general

#### 3.1.1 Application—ch 3

- (1) Chapter 3 applies to all *authorised firms* carrying on *regulated activities* in or from the *QFC*.
- (2) Part 3.2 (Financial promotions—all customers) and part 3.4 (Financial promotions—miscellaneous) apply to an *authorised firm* if it makes or approves a *financial promotion* to a *customer*.
- (3) Part 3.3 (Financial promotions—retail customers) applies, in addition to part 3.2 and part 3.4, to an *authorised firm* if it makes or approves a *financial promotion* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail customer*.

*Note* The definition of *customer* in *INAP* includes *business customer*, *commercial customer* (in relation to *insurance business* and *insurance mediation business*) and *retail customer*.

- (4) It is intended that the provisions of this chapter apply to an *authorised firm* in a way that is appropriate and proportionate, taking into account, for example, the means used for communicating the *financial promotion*, and the information that the *financial promotion* is intended to convey to the *customer*.

## Part 3.2 Financial promotions—all customers

### 3.2.1 Financial promotions—compliance confirmation

Before an *authorised firm* makes or approves a *financial promotion*, the firm must ensure that a *senior manager* with appropriate expertise and authority—

- (a) reviews the *financial promotion*; and
- (b) confirms in writing that it complies with this chapter.

### 3.2.2 Financial promotions—making and approving

(1) An *authorised firm* must not allow a *person* to make a *financial promotion* for it in or from the *QFC* unless—

- (a) the *financial promotion* has been reviewed, and confirmed to comply with this chapter, under rule 3.2.1; and
- (b) the *person* is—
  - (i) an employee of the firm who is an *approved individual*; or
  - (ii) an *approved representative* of the firm; or
  - (iii) another *authorised firm*; or
  - (iv) a *QFC licensed firm*; and

*Note* The definition of *employee* in *INAP* does not apply to par (a) (i) and ‘employee’ bears its natural meaning (see *INAP* 1.4).

(c) if the *person* is a *QFC licensed firm*—the *authorised firm* has approved the content of the *financial promotion* for the *FSR*, article 81.

(2) An *authorised firm* must not allow a *person* to make a *financial promotion* for it in the *State* outside the *QFC* unless—

- (a) the *financial promotion* has been reviewed, and confirmed to comply with this chapter, under rule 3.2.1; and

- (b) the person is a *non-QFC intermediary* of the firm.
- (3) An *authorised firm* must take all reasonable steps to ensure that—
  - (a) a *person* (other than a *person* mentioned in subrule (1) (b)), does not make (or purport to make) a *financial promotion* for it in or from the *QFC*; and
  - (b) a *person* (other than a *non-QFC intermediary* of the firm) does not make (or purport to make) a *financial promotion* for it in the *State* outside the *QFC*.

### **3.2.3 Financial promotions—content**

- (1) If an *authorised firm* makes or approves a *financial promotion*, it must ensure that—
  - (a) the *financial promotion* is clear, fair and not misleading; and
  - (b) the promotional purpose of the *financial promotion* is clearly identifiable; and
  - (c) the *financial promotion* does not omit anything that causes the *financial promotion* not to be clear, fair and not misleading; and
  - (d) the accuracy of all material statements of fact in the *financial promotion* can be substantiated; and
  - (e) if the *financial promotion* includes a material statement of fact—that it is sufficiently up to date to ensure the *financial promotion* does not breach paragraph (a); and
  - (f) if the *financial promotion* is in relation to a *regulated activity* or *specified product* that places a *customer's* capital at risk—it makes this clear; and
  - (g) if the *financial promotion* is in relation to a *regulated activity* or *specified product* with a complex charging structure or in relation to which the *authorised firm* will receive 2 or more elements of *remuneration*—the *financial promotion* contains sufficient information taking into account the needs of the recipients; and

- (h) the *financial promotion* does not mention an approval or authorisation of the *Regulatory Authority* that has not been given in writing by the *Regulatory Authority*.
- (2) If an *authorised firm* makes or approves a written *financial promotion*, the firm must ensure that the *financial promotion* contains the following information:
  - (a) the name of the *authorised firm* making the *financial promotion*;
  - (b) either the address of the *authorised firm* making the *financial promotion* or a contact point (for example, a web site) from which the address is available;
  - (c) the date of issue and, if applicable, the expiry date of the *financial promotion*;
  - (d) the intended audience of the *financial promotion* and, if applicable, that the *financial promotion* is directed solely at *persons* who are not *retail customers*;
  - (e) the regulatory status of the *authorised firm* making the *financial promotion* in a form required by *GENE*.

*Note* See *GENE*, r 3.1.

### **3.2.4 Financial promotions—additional content requirements**

An *authorised firm* must ensure a *financial promotion* made for it by another *person* contains the names of the firm and the other *person*.

### **3.2.5 Financial promotions—included in other communications etc**

If an *authorised firm* communicates information to a *customer* (whether in a document required by *COND* or otherwise), the firm must not include or embed a *financial promotion* in the communication in a way that obscures—

- (a) the objectives or purpose of the communication; or

- (b) the nature or purpose of the *financial promotion*.

### **3.2.6 Financial promotions—withdrawal**

If an *authorised firm* becomes aware that a *financial promotion* does not comply or no longer complies with this chapter, the firm must ensure that the *financial promotion* is withdrawn as soon as practicable by either—

- (a) ceasing to make the *financial promotion* and telling any *person* that the firm knows to be relying on it that the promotion is withdrawn; or
- (b) withdrawing its approval and telling any *person* that the firm knows to be relying on it that the promotion is withdrawn.

## **Part 3.3                      Financial promotions—retail customers**

*Note for pt 3.3*

For the application of this part, see r 3.1.1 (3).

### **3.3.1            Retail financial promotions—presentation**

Before an *authorised firm* makes or approves a *financial promotion*, it must ensure that the *financial promotion*—

- (a) is accurate and, in particular, does not emphasise any potential benefits of a *specified product* without also giving a fair and prominent indication of any relevant risks; and
- (b) is sufficient for the needs of, and presented in a way that is likely to be understood by, the average member of the group to whom it is addressed or by whom it is likely to be received; and
- (c) does not disguise, diminish or obscure important items, statements or warnings.

### **3.3.2            Retail financial promotions—comparisons**

If an *authorised firm* makes or approves a *financial promotion* that contains a comparison or contrast, it must ensure that—

- (a) the comparison is meaningful and presented in an objective and balanced way; and
- (b) the sources of the information used for the comparison are stated; and
- (c) the key facts and assumptions used to make the comparison are included.

### **3.3.3            Retail financial promotions—past performance**

- (1) If an *authorised firm* makes or approves a *financial promotion* that includes or refers to past performance of a *regulated activity* or *specified product*, it must ensure that—

- (a) the performance information is not the most prominent feature of the *financial promotion*; and
  - (b) the performance information—
    - (i) covers at least the last 5 years or the entire period for which the *regulated activity* or *specified product* has been offered but never less than 3 consecutive years; and
    - (ii) is based on complete 12-month periods; and
  - (c) the reference period, basis and the source of the performance information are clearly stated; and
  - (d) the *financial promotion* contains a prominent warning that the performance information refers to the past and that past performance is not a reliable indicator of future performance; and
  - (e) if the performance information is based on gross performance—the *financial promotion* discloses the effect of *commissions*, fees or other charges on the past performance.
- (2) If the past performance is of a *packaged product* other than a unit-linked *life policy*, the *authorised firm* must ensure that the performance information is given on—
- (a) an offer-to-bid basis (which should be stated), if there is an actual return or comparison of performance with other investments; or
  - (b) an offer-to-offer, bid-to-bid or offer-to-bid basis (which should be stated), if there is a comparison of performance with an index or with movements in the price of units; or
  - (c) a single-pricing basis (which should be stated) with allowance for charges.
- (3) If the pricing policy of the *packaged product* mentioned in subrule (2) has changed, the *authorised firm* must ensure that the prices used include the adjustments necessary to remove any distortions resulting from the pricing method.

### **3.3.4 Retail financial promotions—simulated past performance**

If an *authorised firm* makes or approves a *financial promotion* that includes or refers to simulated past performance of a *regulated activity* or *specified product*, it must ensure that—

- (a) the simulated past performance relates to an investment or financial index; and
- (b) the simulated past performance is based on the actual past performance of 1 or more investments or financial indices that are the same as, or underlie, the investment or financial index; and
- (c) in relation to the actual past performance, rule 3.3.3 (1) (b), (c) and (e), (2) and (3) is complied with; and
- (d) the *financial promotion* contains a prominent warning that the performance information refers to simulated past performance and that this is not a reliable indicator of future performance.

### **3.3.5 Retail financial promotions—future performance forecasts**

(1) If an *authorised firm* makes or approves a *financial promotion* that includes or refers to a forecast of the future performance of a *regulated activity* or *specified product*, it must ensure that—

- (a) the forecast is not based on, and does not refer to, simulated past performance; and
- (b) the forecast is based on reasonable assumptions supported by objective data; and
- (c) if the forecast is based on gross performance—the *financial promotion* discloses the effect of *commissions*, fees or other charges on the forecast; and
- (d) the *financial promotion* contains a prominent warning that forecasts are not a reliable indicator of future performance.



- (2) If an *authorised firm* makes or approves a *financial promotion* that includes or refers to a forecast of the future performance of a *life policy*, it must ensure—
  - (a) the forecast complies with the requirements of division 4.3.B (Packaged products—additional disclosure) relating to projections; and
  - (b) if the forecast is a projection made in accordance with rule 4.3.18 (Life policies—projection calculation rules)—the firm must ensure that the *financial promotion*—
    - (i) clearly indicates that the projection is for illustrative purposes only; and
    - (ii) includes wording to the effect that *retail customers* will be individually assessed by the firm before any advice on investments is provided.

### **3.3.6 Retail financial promotions—direct offers and invitations**

- (1) An *authorised firm* making or approving a *financial promotion* must ensure the promotion complies with subrule (2), (3) or (4), as appropriate, if the *financial promotion* includes—
  - (a) an offer to enter into an agreement relating to a *regulated activity* or *specified product* with any *person* who responds to the *financial promotion*; or
  - (b) an invitation to any *person* who responds to the *financial promotion* to make an offer to enter into an agreement relating to a *regulated activity* or *specified product*.
- (2) If the *financial promotion* relates to *investment business*, the *authorised firm* must ensure that it includes—
  - (a) the information required by part 4.2 (Investment business—initial client contact); and
  - (b) if the *investment business* relates to a *packaged product*—the product disclosure information required by division 4.3.B (Packaged products—additional disclosure).

- (3) If the *financial promotion* relates to a *life policy*, the *authorised firm* must ensure that it includes—
  - (a) the information required by subrule (2); and
  - (b) a statement about the benefits (if any) that are fixed amounts, and what the amounts are; and
  - (c) a statement about the benefits that are not fixed amounts.
- (4) If the *financial promotion* relates to a *non-investment insurance contract*, the *authorised firm* must ensure that it includes—
  - (a) information required by part 5.2 (Non-investment insurance—initial client contact); and
  - (b) information required by rule 5.4.1 (1) and (2) (Non-investment insurance product disclosure—requirement).

**Guidance for r 3.3.6**

To enable a *retail customer* to make an informed assessment of the *regulated activity* or *specified product* promoted by the *financial promotion*, the *authorised firm* may wish to include in the *financial promotion* a statement that the recipient should seek advice if the recipient has any doubt about the suitability of what is being promoted.

**3.3.7 Retail financial promotions—non-written promotions**

If an *authorised firm* makes a *cold call* or another *financial promotion* that is not in writing to a particular *retail customer* outside the firm's premises, it must ensure that the individual making the *financial promotion*—

- (a) only does so at an appropriate time of the day; and
- (b) at the outset of the communication does each of the following:
  - (i) identifies himself or herself and the *authorised firm*;
  - (ii) makes clear the purpose of the communication;
  - (iii) clarifies whether the customer would like to continue with or end the communication; and

- (c) ends the communication when the customer asks that it be ended; and
- (d) gives a contact point to the customer if an appointment is arranged for the customer.

### **3.3.8 Cold calls—general rule**

An *authorised firm* must not make a *cold call* to a *retail customer* unless—

- (a) the cold call relates only to *packaged products* or *non-investment contracts of insurance* (or both); or
- (b) the firm has an existing relationship with the customer and the customer has agreed in writing to receive *cold calls* from the firm; or
- (c) another *person* has referred the customer's contact details to the firm for the firm to contact the customer and the customer has agreed in writing to the referral.

### **3.3.9 Cold calls—offers and invitations**

- (1) This rule applies if an *authorised firm* makes a *cold call* to a *retail customer*.
- (2) During the *cold call* with the *retail customer*, the *authorised firm* must not—
  - (a) offer to enter into a relevant agreement with the customer; or
  - (b) invite the customer to make an offer to enter into a relevant agreement with the firm; or
  - (c) accept any offer by the customer to enter into a relevant agreement with the firm.

- (3) In this rule:

***relevant agreement*** means an agreement relating to a *regulated activity* in relation to a *specified product*, including a *packaged product* or *non-investment contract of insurance*.

**3.3.10 Cold calls—continued dealing with customer**

- (1) If an *authorised firm* makes a *cold call* to a *retail customer* in relation to a relevant agreement and the customer expresses an interest during the cold call in entering into the agreement with the firm, the firm may only continue to deal with the customer in relation to the agreement in accordance with either of the following paragraphs:
  - (a) the firm may give the customer a written *financial promotion* containing an offer or invitation to enter into the agreement in accordance with rule 3.3.6 (Retail financial promotions—direct offers and invitations);
  - (b) the firm may deal with the customer in accordance with—
    - (i) if the relevant agreement relates to *investment business*—part 4.2 (Investment business—initial client contact) on the basis that the *cold call* is the firm’s first contact with the customer for the purpose of conducting *investment business*; or
    - (ii) if the relevant agreement relates to a *non-investment insurance contract*—part 5.2 (Non-investment—initial client contact) on the basis that the *cold call* is the firm’s first contact with the customer for the purpose of conducting non-investment *insurance mediation business*.
- (2) In this rule:

*relevant agreement* means an agreement relating to a *regulated activity* in relation to a *specified product*, including a *packaged product* or *non-investment contract of insurance*.

## Part 3.4 Financial promotions— miscellaneous

### 3.4.1 Financial promotions—recordkeeping

- (1) An *authorised firm* must keep records of each *financial promotion* that it makes or approves.
- (2) The record must include the following:
  - (a) the name of each *senior manager* who reviewed the *financial promotion* and confirmed in writing that it complied with this chapter;
  - (b) a copy of each written confirmation by a *senior manager*;
  - (c) the date the *financial promotion* was made or approved;
  - (d) the medium in or for which the *financial promotion* was made or approved;
  - (e) if applicable, the evidence supporting any material statements of fact in the *financial promotion*;
  - (f) if applicable, details of any withdrawal of the *financial promotion*;
  - (g) if the *financial promotion* was in writing—a copy of the *financial promotion*;
  - (h) if the *financial promotion* was a *cold call* or another *financial promotion* that was not in writing—details of the *financial promotion* and its outcome, including sufficient details to demonstrate that this chapter was complied with in relation to the *financial promotion*.

#### **Guidance for r 3.4.1 (2) (h)**

Details recorded for rule 3.4.1 (2) (h) should include the following:

- (a) whether, during the communication, the *retail customer* asked that the communication be ended or that the customer not be contacted again;
- (b) whether the firm continued to deal with the customer under rule 3.3.10 (1) (a) or (b) or (2) (a) or (b).

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- (3) The *authorised firm* must keep the records for at least 6 years after the *financial promotion* is no longer made.
- (4) This rule is additional to any other provision of *COND* that requires records to be made or kept.

## Chapter 4            Conduct of investment business

### Part 4.1            Investment business—general

#### 4.1.1            Application—ch 4

- (1) Chapter 4 applies to all *authorised firms* conducting *investment business* in or from the *QFC*.

*Note*     For *COND*, *investment business* in relation to a *relevant investment* does not include a *long term insurance contract* unless that contract is a *life policy* (see *INAP* defs *investment business* and *relevant investment*).

- (2) However, the *operator* of a *collective investment fund* who is carrying on the *regulated activity* of *operating a collective investment fund* need only comply with the following provisions of chapter 4:

- division 4.5.B (Personal account transactions)
- division 4.5.C (Dealing and managing).

*Note 1*     Under the *INAP* definition of *business customer*, a *collective investment fund* is a *business customer*.

*Note 2*     See r 6.1.2 (1) for the application of this chapter to the effecting of a *life policy* by an *authorised firm* in an *execution-only transaction*.

## **Part 4.2 Investment business—initial client contact**

### **Division 4.2.A Information on the firm—retail customers**

#### **4.2.1 Initial disclosure document—general requirement**

- (1) When an *authorised firm* first makes contact with a *retail customer* for the purpose of conducting *investment business*, the firm must give the customer an *initial disclosure document*.
- (2) This rule is subject to rule 4.2.2.

#### **4.2.2 Initial disclosure document—exemptions**

- (1) Rule 4.2.1 (1) does not apply in relation to the first contact between a *retail customer* and an *authorised firm* for the purpose of conducting investment business if—
  - (a) all the information required by this part to be given to a *retail customer* has been given by the firm to the customer on a previous occasion, and that information is still accurate and likely to be appropriate for the customer; or
  - (b) the initial contact is made by telephone; or  
*Note* Rule 4.2.4 applies to initial contact by telephone.
  - (c) in relation to a *life policy*—the customer contacts the firm for a quote and at the time the quote is provided the quote cannot be accepted and a contract formed without the firm obtaining further information from the customer; or
  - (d) the firm gives the information required by rule 4.2.3 to the customer in its *terms of business* for the customer and the *terms of business* are given to the customer a reasonable time before the firm conducts *investment business* with or for the customer.
- (2) Rule 4.2.1 (1) also does not apply if—



- (a) the *authorised firm* is not advising the *retail customer* on *relevant investments*; and
- (b) the firm gives the information required to be included in the *initial disclosure document* to the customer orally; and
- (c) 1 or more of the following applies:
  - (i) the customer asks for the information to be given orally;
  - (ii) the customer requires the firm to provide immediate cover;
  - (iii) the firm wishes to enter into an *execution-only transaction* (apart from a *contingent liability transaction*) with the customer, prior written disclosure would delay the *transaction*, and the customer agrees to be given the information orally; and
- (d) the firm gives the information to the customer in either an *initial disclosure document* or another disclosure document, as appropriate, immediately after the contract resulting from the contact between the customer and the firm is finalised.

#### **4.2.3 Initial disclosure document—content**

- (1) An *authorised firm* must ensure that the *initial disclosure document* that the firm gives a *retail customer* contains the information that the firm reasonably considers will be, or is likely to be, appropriate for the customer having regard to the *investment business* that the firm may conduct with or for the customer.
- (2) Without limiting subrule (1), the *initial disclosure document* must contain the following information:
  - (a) the name and business address of the *authorised firm*;
  - (b) the firm's regulatory status in a form required by *GENE*;

*Note* See *GENE*, r 3.1.

- (c) the name or position of *employees* and any *approved representative* with whom the *retail customer* may have contact;
  - (d) the statement prepared by it in accordance with rule 4.3.7 (2) (Retail investment advice—statement of independence);
  - (e) the *investment business* offered by the firm to the customer;
  - (f) whether the firm charges on the basis of fees or *commissions*, or a combination of fees and *commissions*;
  - (g) subject to subrule (4), the fees or likely *commissions* (or both) that the customer would be charged for the *investment business* being offered by the firm to the customer;
  - (h) guidance on, and appropriate warnings of, the material risks associated with—
    - (i) the *investment business* being offered by the firm to the customer; and
    - (ii) any investment strategy followed by the firm;
  - (i) the availability of the firm’s internal complaint-handling procedures and how a complaint may be made to the firm;
  - (j) the availability of the *customer dispute resolution scheme*.
- (3) An *authorised firm* must ensure that the information included in an *initial disclosure document* for a *retail customer* is up to date.
- (4) If the information required under rule 4.2.3 (2) (g) is not available at the time the *initial disclosure document* is given to the *retail customer*, the information must be given to the customer not later than a reasonable time before the customer becomes contractually bound in relation to the *investment business*.

#### **4.2.4 Initial contact by telephone**

- (1) If an *authorised firm’s* first contact with a *retail customer* is by telephone, the firm must, on initially making contact with the customer, give the customer the following information:

- (a) the firm's name and, if the call is initiated by or for the firm, the commercial purpose of the call;
  - (b) whether the firm will provide the customer with advice on investments;
  - (c) if the firm will provide the customer with advice on *packaged products*—
    - (i) whether the firm offers *packaged products* from the whole market, a limited number of *product providers* or a single *product provider*;
    - (ii) that the *customer* can ask for a statement of the range of *packaged products* offered by the firm;
  - (d) whether the firm offers a fee-based service, a *commission-based* service, a service based on a combination of fees and *commissions*, or a combination of these 3 types of services, and the consequences for the customer of choosing each option offered;
  - (e) that the information given under paragraphs (a) to (d) will be confirmed in writing as soon as practicable after the end of the call.
- (2) An *authorised firm* may only finalise a contract for the purchase or sale of a *specified product* during its initial telephone contact with a *retail customer* if it is an *execution-only transaction* (other than in relation to a *contingent liability transaction*).
- (3) If an *authorised firm* finalises a contract for an *execution-only transaction* during its initial telephone contact with a *retail customer*, the firm must give the customer the *product disclosure document* required by division 4.3.B (Packaged products—additional disclosure) as soon as practicable after the contract is finalised.

## **Division 4.2.B      Terms of business for investment business—all customers**

### **4.2.5      Terms of business for investment business—general requirements**

- (1) Before an *authorised firm* conducts *investment business* with or for a *customer*, it must—
  - (a) give the *customer* its *terms of business* for the *customer*; and
  - (b) if the *customer* is a *retail customer*—ensure that the *customer* signs or otherwise agrees in writing to the *terms of business*, including the particular rate or amount the firm will charge the customer for its services.
- (2) This rule does not apply if—
  - (a) the *investment business* is carried on after termination of the *terms of business* and the *authorised firm* is acting only for the purposes of fulfilling any obligations still outstanding under the *terms of business*; or
  - (b) the *authorised firm* is entering into an *execution-only transaction* (apart from a *contingent liability transaction*) with or for a *customer*.

### **4.2.6      Terms of business for investment business—content**

- (1) An *authorised firm* must ensure that its *terms of business* for a *customer* for *investment business* contain, in adequate detail, the basis on which it will conduct *investment business* with or for the *customer*.

#### **Guidance for r 4.2.6 (1)**

If an *authorised firm* proposes to manage *relevant investments* in an account or portfolio for a *retail customer* on a discretionary basis under the terms of a discretionary management agreement, the *terms of business* must set out the terms of the discretionary management agreement.

- (2) Without limiting subrule (1), the *authorised firm* must ensure that the *terms of business* contain the information required by—

- (a) schedule 1 (Minimum content of terms of business), part S1.1 (Minimum information required for all investment business); and
  - (b) if the *terms of business* cover the firm acting as *investment manager* for the *customer*—schedule 1, part S1.2 (Minimum information required for investment management).
- (3) However, the *authorised firm* is not required to include information in the *terms of business* if the information is, by its nature, unavailable when the *terms of business* are given to the *customer*.
- (4) If information mentioned in subrule (3) becomes available after the *terms of business* are given to the *customer*, the *authorised firm* must give the information to the *customer* as soon as practicable after it becomes available to the firm.

#### **4.2.7 Terms of business for investment business—multiple documents**

An *authorised firm's terms of business* for a *customer* for *investment business* may consist of 1 or more documents if it is made clear to the *customer* that collectively they make up the *terms of business*.

#### **4.2.8 Terms of business for investment business—amendment**

- (1) If the *terms of business* of an *authorised firm* for a *customer* for *investment business* allow the firm to amend the *terms of business* without the *customer's* agreement, the firm must not conduct business with or for the *customer* on the basis of an amendment of the *terms of business* unless the firm has given the *customer* written notice of the amendment—
- (a) at least 10 *business days* before the amendment is to take effect; or
  - (b) if it is impractical to give that notice—as early as is practicable.
- (2) Despite subrule (1), if an *authorised firm* has started to provide a *retail customer* with services in relation to *packaged products* after

giving the customer its *terms of business*, the firm must not (at least until it has finished providing the services)—

- (a) increase the rate or amount of the fees it is charging the customer for the services; or
- (b) keep any *commission* for the services that exceeds the maximum amount or rate disclosed in the *terms of business*;

unless the firm has given the customer an appropriate amendment of the *terms of business* and the customer has agreed to the amendment in a durable medium.

- (3) However, the *authorised firm* is not required to give the *retail customer* an amendment of the *terms of business* if—
  - (a) the maximum rates or amounts disclosed in the *terms of business* already in force for the customer only apply to policies of the example term or policyholder's age given in the firm's *initial disclosure document* to the customer, or to policies with shorter terms; and
  - (b) the firm arranges a policy for a term longer than the example term and the increase in the *commission* that the firm arranges to keep over the maximum disclosed in the *initial disclosure document* is not more than an amount that is directly proportional to the increased term of the policy.

## **Division 4.2.C Initial client contact—miscellaneous**

### **4.2.9 Initial client contact—recordkeeping**

- (1) An *authorised firm* must—
  - (a) keep a copy of each of the *initial disclosure documents* that it gives *retail customers* under this part for at least 6 years after the day it is last given to a *retail customer*; and
  - (b) keep a record of the version of the *initial disclosure document* that it gives each *retail customer* under this part, and the day it is given to the customer, for at least 6 years after the day it is given to the customer.

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- (2) An *authorised firm* must keep a copy of *terms of business* that it gives a *customer* under this part, and of each amendment of the *terms of business*, for at least 6 years after the day the firm ceases to conduct business with or for the *customer* under the *terms of business*.

## **Part 4.3 Investment services—retail customers**

### **Division 4.3.A Retail investment services**

#### **4.3.1 Retail investment advice—general requirements**

If an *authorised firm* gives advice on *relevant investments* to a *retail customer*, it must—

- (a) take reasonable steps to ensure that it has sufficient personal and financial information about the customer to give the advice (see rule 4.3.3); and
- (b) take reasonable steps to ensure that the advice is suitable for the customer (see rule 4.3.4); and
- (c) give the customer a statement of why the firm considers the advice to be suitable for the customer (see rule 4.3.5).

#### **4.3.2 Retail investment management—general requirements**

- (1) This rule applies if an *authorised firm* manages, or is proposing to manage, *relevant investments* in an account or portfolio for a *retail customer* on a discretionary basis under the terms of a discretionary management agreement.

*Note* The terms of the discretionary management agreement must be set out in the *terms of business* given to the *retail customer*, see r 4.2.6 (Terms of business—content).

- (2) Before the *authorised firm* makes a discretionary investment management decision for the *retail customer*, it must—
  - (a) take reasonable steps to ensure that it has sufficient personal and financial information about the customer to make the decision (see rule 4.3.3); and
  - (b) take reasonable steps to ensure that the decision is suitable for the customer (see rule 4.3.4).



- (3) The *authorised firm* must also take reasonable steps to ensure that the *retail customer's* portfolio or account remains suitable, having regard to the information the firm has about the customer (see rule 4.3.3).

#### **4.3.3 Retail investment services—know your customer**

- (1) For rule 4.3.1 (a) (Retail investment advice—general requirements) and 4.3.2 (2) (a) and (3) (Retail investment management—general requirements), the information obtained by an *authorised firm* about a *retail customer* must, to the extent appropriate to the nature of the customer, the nature and extent of the service to be provided and the type of product or *transaction* envisaged, including their complexity and the risks involved, include all of the following:
  - (a) the customer's financial situation;
  - (b) the customer's investment objectives and risk tolerance;
  - (c) the customer's knowledge of and experience in the relevant investment field;
  - (d) the nature, volume and frequency of the customer's *transactions* in the investment field and the period over which they have been carried out;
  - (e) the customer's level of education and profession or relevant former profession.
- (2) If the *authorised firm* asks the *retail customer* for personal or financial information about the customer and the customer fails to give it to the firm, the firm must warn the customer in writing that failure to give the information to the firm may adversely affect the quality of the service provided by it to the customer.
- (3) An *authorised firm* must take reasonable steps to ensure that the information it has about a *retail customer* is accurate, complete and up-to-date.

#### **4.3.4 Retail investment services—suitability and risk**

- (1) For rule 4.3.1 (b) (Retail investment advice—general requirements) and 4.3.2 (2) (b) (Retail investment management—general requirements), an *authorised firm* must ensure that the service it provides for a *retail customer* is suitable for the customer having regard to—
  - (a) the information held by the firm; and
  - (b) any requirement of, or any other relevant facts about, the customer of which the firm is, or ought reasonably to be, aware.
- (2) If, with the *retail customer's* agreement, the *authorised firm* has pooled the customer's funds with the funds of others to take common discretionary management decisions, the firm must take reasonable steps to ensure that a discretionary decision is suitable for the fund, having regard to the stated investment objectives of the fund.

#### **4.3.5 Retail investment services—disclosure of suitability assessment**

For rule 4.3.1 (c) (Retail investment advice—general requirements), the statement given by an *authorised firm* to a *retail customer* must include the following information:

- (a) the customer's demands and needs;
- (b) an explanation of why the firm has concluded that the advice is suitable for the customer having regard to the information provided by the customer;
- (c) an explanation of any possible disadvantages that the advice might have for the customer, including the nature of the risks involved.

#### **4.3.6 Retail investment advice—independence**

- (1) This rule applies if an *authorised firm* is *advising on investments* to a particular *retail customer* in relation to *packaged products*.

- (2) The *authorised firm* must not hold itself out as acting independently unless it—
- (a) is not party to any arrangements with particular *product providers* that prevent it from giving advice on *packaged products* from the whole market (or the whole of the relevant sector of the market); and
  - (b) gives the advice on *packaged products* from a sufficiently large range of *product providers* to enable it to give the advice on the basis of a fair analysis of the market; and
  - (c) offers the *retail customer* the opportunity of paying a fee for giving the advice.

**Guidance for r 4.3.6 (2) (c)**

Rule 4.3.6 (2) (c) means that an *authorised firm* wishing to hold itself out as independent will need to give *retail customers* a purely fee-based option for paying for its services. The fee may be offered on a contingent basis so that it does not become payable if the *retail customer* does not buy a product. An *authorised firm* offering a fee-based service may, in addition, provide the *retail customer* with other payment options, for example, by *commission*.

- (3) If the *authorised firm* is *advising on investments* to the *retail customer* in relation to a *packaged product* produced by another *person*, it must not—
- (a) hold itself out as the producer of the *packaged product*; or
  - (b) do or say, or fail to do or say, anything that might reasonably lead the customer to be mistaken about the identity of the producer of the *packaged product*.
- (4) The *authorised firm* must take reasonable steps to ensure that none of its *employees*—
- (a) is likely to be influenced by the structure of his or her *remuneration* to give unsuitable advice on investments to the *retail customer*; or
  - (b) refers the *retail customer* to another *person* in circumstances that would amount to the provision of an inducement.

#### **4.3.7 Retail investment advice—statement of independence**

- (1) This rule applies if an *authorised firm* gives advice to *retail customers* in relation to *packaged products*.
- (2) The *authorised firm* must prepare, and keep up to date, a written statement setting out—
  - (a) whether or not it is acting independently; and
  - (b) details of any arrangements with particular *product providers* that prevent it from giving advice on *packaged products* from the whole market (or the whole of the relevant sector of the market); and
  - (c) the range of *product providers* on whose *packaged products* it gives advice, including—
    - (i) the identity of the *product providers* whose *packaged products* the firm may sell; and
    - (ii) a list of the categories of their products the firm may sell.
- (3) The *authorised firm* must include a copy of the statement under subrule (2) in its *initial disclosure document* for a *retail customer* (see rule 4.2.3 (2) (d)).
- (4) If the *authorised firm* gives advice to a *retail customer* in relation to *packaged products*, the firm must either—
  - (a) draw the customer's attention to the statement under subrule (2) of independence included in the firm's *initial disclosure document* for the customer; or
  - (b) give the customer another copy of the statement.

#### **4.3.8 Retail investment services—charges**

- (1) An *authorised firm* must ensure that its *charges* to a *retail customer* are not excessive.
- (2) If an *authorised firm's* *charges* for advising on or managing a *retail customer's* assets depend on the value of *relevant investments* that are not *readily realisable investments*, the valuation of the *relevant*

*investments* must be based on the price likely to be agreed between a willing buyer and a willing seller who are dealing at arm's-length and who are both in possession of all freely available information about the *relevant investments*.

#### **4.3.9 Retail investment services—recordkeeping**

- (1) An *authorised firm* must make and keep the following records for at least 6 years after the day it gives advice on investments to a *retail customer*:
  - (a) a record of the personal and financial information that it has about the customer, including the information that it has obtained in accordance with rule 4.3.3 (Retail investment services—know your customer);
  - (b) if the firm gave the customer a statement under rule 4.3.1 (c) (Retail investment advice—general requirements)—a copy of the statement;
  - (c) a record of the steps taken by the firm to ensure that the service it provides for the customer is suitable for the customer as required by rule 4.3.5 (Retail investment services—disclosure of suitability assessment).
- (2) However, the *authorised firm* need not keep the records if the firm gives advice to the *retail customer* in relation to a *transaction* and the customer does not proceed with the *transaction* or any part of it.
- (3) The *authorised firm* must keep a statement under rule 4.3.7 (2) (Retail investment advice—statement of independence) for at least 6 years after the day it is replaced by a more up-to-date statement.

### **Division 4.3.B Packaged products—additional disclosure**

#### **4.3.10 Product disclosure document—preparation**

An *authorised firm* must prepare a *product disclosure document* for each *packaged product* it produces.

#### 4.3.11 Product disclosure document—provision requirement

- (1) An *authorised firm* (the *selling firm*) must not sell, or arrange for the sale of, a *packaged product* to a *retail customer* unless it has given the customer, not later than a reasonable time before the customer becomes contractually bound in relation to the sale of the *packaged product*—
  - (a) a *product disclosure document* for the *packaged product*; or
  - (b) if the *packaged product* was produced by another *authorised firm*—a *product disclosure document* that complies with subrule (2); or
  - (c) if the *packaged product* was produced by a *person* in a *jurisdiction* outside the *QFC*—disclosure documentation that complies with subrule (3).
- (2) If the *packaged product* was produced by another *authorised firm*, the *product disclosure document* given to the *retail customer* under subrule (1) (b)—
  - (a) must be the *product disclosure document* prepared by the other *authorised firm*; but
  - (b) must prominently display each of the following:
    - (i) the name of the selling firm;
    - (ii) either the address of the selling firm or a contact point from which the address is available;
    - (iii) the selling firm’s regulatory status in a form required by *GENE*.

*Note* See *GENE*, r 3.1.
- (3) If the *packaged product* was produced by a *person* in a *jurisdiction* outside the *QFC*, the disclosure documentation given to the *retail customer* under subrule (1) (c) complies with this subrule if—
  - (a) the selling firm is satisfied on reasonable grounds that—

- (i) the disclosure documentation was prepared by the *person* in accordance with the requirements of the law of the other *jurisdiction*; and
    - (ii) those requirements are broadly equivalent to the requirements of this division; and
  - (b) the disclosure documentation prominently displays—
    - (i) the information mentioned in subrule (2) (b) (i) to (iii); and
    - (ii) if the *packaged product* is a *life policy*—
      - (A) a statement to the effect that the *person* who produced the *packaged product* (the *insurer*) is not authorised or regulated by the *Regulatory Authority*; and
      - (B) an explanation of any differences between the cancellation rights (if any) applying in relation to the *packaged product* (including the length of any period to exercise the rights) and those that would be provided under *COND* if the insurer were an *authorised firm*; and
      - (C) a warning to the effect that the claims handling procedures applying in relation to the *packaged product* may differ from those provided under *COND*.
- (4) If a *life policy* sold by an *authorised firm* to a *retail customer* is varied and, because of the variation, the customer has a right to cancel the *life policy* under rule 6.2.2 (Variations of life policies—right to cancel), the firm must—
- (a) update the document that it gave the customer under subrule (1) in relation to the *life policy* to reflect the variation; and
  - (b) give a copy of the updated document to the customer.
- (5) This rule is subject to rule 4.3.12 (Product disclosure document—provision requirement exemption).

**Guidance for r 4.3.11 (2) and (3)**

- 1 An *authorised firm* may comply with rule 4.3.11 (2) (b) or (3) (b) by including the required information in a sticker or wrapper attached to the *product disclosure document* or disclosure documentation.
- 2 The purpose of rule 4.3.11 (3) is to allow an *authorised firm* to give disclosure documentation that meets the disclosure objectives of a *product disclosure document*, even if the form or content is different in matters of detail from that required by this division. For example, an *authorised firm* could provide a disclosure document that uses a projection or illustration prepared in accordance with rules prescribed by an *overseas regulator*, if these ensure a fair projection based on objective and reasonable assumptions.

**4.3.12 Product disclosure document—provision requirement exemptions**

- (1) Rule 4.3.11 (Product disclosure documentation—provision requirement) does not apply in relation to the sale of a *packaged product* by an *authorised firm* to a *retail customer* if—
  - (a) the sale takes place during the firm’s first contact with the customer; and
  - (b) the contact takes place by telephone; and
  - (c) rule 4.2.4 (Initial contact by telephone) is complied with in relation to the contact.
- (2) Rule 4.3.11 also does not apply in relation to the sale of a *packaged product* by an *authorised firm* to a *retail customer* if—
  - (a) the customer is buying the *packaged product* without advice in response to a *financial promotion* containing an offer or invitation; and
  - (b) the *financial promotion* is made in accordance with rule 3.3.6 (Retail financial promotions—direct offers and invitations).

**4.3.13 Product disclosure document—form**

An *authorised firm* must ensure that a *product disclosure document* given by it to a *retail customer* for a *packaged product*—



- (a) is produced and presented to at least the same quality and standard as the sales or marketing material used by it to promote the *packaged product*; and
- (b) is separate from any other material given to the customer; and
- (c) displays the *product provider's* brand at least as prominently as any other brand displayed; and
- (d) does not disguise, diminish or obscure important items, statements or warnings.

#### **4.3.14 Product disclosure document—content**

- (1) An *authorised firm* must ensure that a *product disclosure document* prepared by it for a *packaged product* includes each of the following:

- (a) the firm's name;
- (b) either the address of the firm or a contact point from which the address is available;
- (c) the firm's regulatory status in a form required by *GENE*;

*Note* See *GENE*, r 3.1.

- (d) the following statement prominently displayed:

'The Qatar Financial Centre Regulatory Authority is the independent financial services regulator for the Qatar Financial Centre. It requires us, [*insert authorised firm's name*], to give you this important information to help you to decide whether this [*insert 'product' or product name*] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safely for future reference.';

- (e) a description, appropriate for the *packaged product's* complexity, of its nature, its particular characteristics, how it works, and any limitations or minimum standards that apply;

- (f) enough information about the material benefits and risks of buying the product for a *retail customer* to be able to make an informed decision about whether to buy;
  - (g) the availability of the firm's internal complaint-handling procedures and how a complaint may be made to the firm;
  - (h) the availability of the *customer dispute resolution scheme*;
  - (i) whether there is a right to cancel and, if there is a right to cancel, the consequences of exercising this right, and enough details to enable the right to be exercised by a *retail customer*.
- (2) An *authorised firm* must not, in a *product disclosure document* prepared by it, do or say (or fail to do or say) anything that might reasonably lead a *retail customer* to be mistaken about the *product provider's* identity.

#### **4.3.15 Life policies—additional content**

- (1) An *authorised firm* must ensure that a *product disclosure document* prepared by it for a *life policy* for a *retail customer* includes the following:
- (a) a definition of each benefit and option;
  - (b) the term of the contract;
  - (c) details of how the contract may be terminated;
  - (d) how and when premiums are payable;
  - (e) details of how bonuses are calculated and distributed, including the following information:
    - (i) how profits that are allocated for the payment of bonuses are distributed;
    - (ii) whether increased benefits resulting from bonuses are payable (subject to any adjustments) even if the contract is terminated early by either party to the contract;

- (iii) if bonuses increase benefits—whether increases are likely to be made each year or only when the policy amounts become payable to the policyholder;
  - (iv) the basis on which bonuses are distributed to policyholders;
  - (v) whether policies share equitably in the allocation of all the profits of the long-term fund, or only certain elements of the profits;
- (f) an illustration prepared in accordance with rule 4.3.16 (Life policies—illustrations), except if the benefits of the *life policy* do not depend on future investment returns;
- (g) information about charges and expenses that, subject to subrule (2), includes—
- (i) a description of the nature of the charges and expenses the *retail customer* will, or may be expected to, pay; and
  - (ii) 2 tables (one for the lower projection, and the other for the higher projection, calculated on the basis of a rate of return mentioned in rule 4.3.16 (2)), each prepared in accordance with rule 4.3.17 (Life policies—effect of charges and expenses table) illustrating the effect of charges and expenses on the policy;
- (h) information on premiums for each benefit, including, if appropriate, both main benefits and supplementary benefits;
- (i) if the *retail customer* has been charged for rider benefits or increased underwriting benefits—the amount of premiums charged for those benefits;
- (j) if the policy is a unit-linked policy—a definition of the units to which benefits are linked and the nature of the underlying assets.
- (2) If the *authorised firm* is exempt from including an illustration mentioned in rule (1) (f) because the benefits of the *life policy* do

not depend on future investment returns, the *product disclosure document* prepared by it for the *life policy* must include—

- (a) an indication of guaranteed benefits, surrender benefits, paid-up values and any other benefits (whichever are applicable) under the policy; and
- (b) the likely amount, and a general description, of the charges and expenses the *retail customer* will, or may be expected to, pay under the policy.

#### **4.3.16 Life policies—illustrations**

- (1) For rule 4.3.15 (1) (f), the illustration must indicate how the main terms of the *life policy* apply to the *retail customer* and contain projections of the final surrender value of the policy calculated in accordance with rule 4.3.18 (Life policies—projection calculation rules).
- (2) The illustration must contain at least 2 projections, with—
  - (a) a lower projection calculated on the basis of a rate of return to be set at no more than 5%; and
  - (b) a higher projection calculated on the basis of a rate of return that the *authorised firm* reasonably expects the *life policy* to achieve, but that, in any event, must be no more than 9%.

#### **4.3.17 Life policies—effect of charges and expenses tables**

- (1) For rule 4.3.15 (1) (g), each table illustrating the effect of charges and expenses on the policy must include the contents of table 4.3.17.

**Table 4.3.17 Effects of charges and expenses**

|   |
|---|
| <b>WARNING – if you cash in early you could get back less than you have paid in</b>   |
| This table illustrates what you would get back from your investment if it grew at x% ( <i>insert rate of return</i> ) a year. These figures are not guaranteed and are only intended to demonstrate the effect of charges and expenses on your investment based on different assumptions on the growth of your investments. |

| At end of Year | Total paid in to date | Effect of charges and expenses to date | What you might get back |
|----------------|-----------------------|--|-------------------------|
| QR             | QR                    | QR                                     | QR                      |
| 1              |                       |  |                         |
| 2              |                       |  |                         |
| 3              |                       |  |                         |
| 4              |                       |  |                         |
| 5              |                       |  |                         |
| 10             |                       |  |                         |
| 15             |                       |  |                         |

- (2) An *authorised firm* may change table 4.3.17 so far as necessary to reflect the nature and effect of the charges and expenses inherent in the particular product.
- (3) In completing the table, the *authorised firm* must—
  - (a) include figures for the first 5 years of the *life policy*; and

- (b) if the policy is a *whole-life policy* or the illustration covers more than 25 years—include figures for the 10th and every subsequent 10th year of the policy’s term; and
- (c) if the policy is not a *whole-life policy* and the illustration covers 25 years or less—include figures for the 10th and every subsequent 5th year of the policy’s term; and
- (d) include—
  - (i) the final year of the policy; or
  - (ii) for a *whole-life policy* or a *single premium life policy* without a fixed term—an appropriate end date for the policy; and
- (e) if there is discontinuity in the trend of surrender values—include the appropriate intervening years; and
- (f) in the ‘Total paid in to date’ column, show cumulative totals of contributions paid to the end of each relevant year; and
- (g) in the ‘Effect of charges and expenses to date’ column, show the figure calculated by taking the accumulated value of the fund without taking charges and expenses into account and then subtracting from that figure the figure in the ‘What you might get back’ column for the same year ; and
- (h) in the ‘What you might get back’ column, show the projection of the surrender value for the policy calculated in accordance with rule 4.3.18 (Life policies—projection calculation rules) and accumulated at the rate of return selected by the firm for the lower or higher projection mentioned in rule 4.3.16 (2) (Life policies—illustrations), as the case requires; and
- (i) if the *retail customer* is entitled to exercise, and has chosen or expressed the intention to exercise, the right to make partial surrenders—include a column headed ‘Withdrawals’ showing the cumulative total of the withdrawals.

- (4) The *authorised firm* must include a statement at the bottom of the table expressing the effect of charges and expenses on the *life policy* in terms of a reduction in the rate of return.

**Guidance for r 4.3.17 (4)**

The reduction in the rate of return (*A*) may be calculated as follows:

$$A = B - C$$

where:

*B* is the rate of return selected by the firm for the lower or higher projection mentioned in rule 4.3.16 (2), as the case requires.

*C* is the annual rate of return worked out by—

- (a) carrying out a projection using *B*; and
- (b) then calculating the annual rate of return (rounded to the nearest tenth of 1%) required to achieve the same projection value if charges and expenses were not taken into account.

**4.3.18 Life policies—projection calculation rules**

- (1) For rule 4.3.16 (Life policies—illustrations) and rule 4.3.17 (Life policies—effect of charges and expenses table), any projection of the surrender value of a *life policy* used in an illustration or an effect of charges and expenses table must be calculated in accordance with a methodology and set of assumptions prepared and approved by the *approved actuary* of the *insurer* preparing the *product disclosure document*.
- (2) In preparing the methodology and assumptions mentioned in subrule (1), the *approved actuary* must have regard to relevant professional standards and any requirements of this division.
- (3) A projection must be specific to the *retail customer* and be calculated on the basis of the customer's age and sex, the amount assured, the premium and other factors material to the *life policy*.
- (4) However, if a projection is calculated for the purposes of a *financial promotion* (including a direct offer or invitation *financial promotion*) or in relation to a single premium *life policy*, it must be calculated on the basis of factors that represent the average member

of the group to whom it is directed or by whom it is likely to be received.

- (5) In calculating the projection, contributions must be net of any rider benefits and extra premiums charged for increased underwriting benefits.

#### **4.3.19 Life policies—provision of policy document**

If an *authorised firm* finalises a *life policy* with or for a *customer*, the firm must, immediately after finalising the policy, give the *customer*, in a durable medium, a policy document containing all the terms of the policy.

#### **4.3.20 Life policies—recordkeeping**

- (1) An *authorised firm* must ensure that a copy of a *product disclosure document* given by it to a *retail customer* in relation to a *life policy* is made and kept for at least 6 years, unless the customer does not take out the policy.
- (2) An *authorised firm* must ensure that a copy of any other disclosure documentation given by it to a *retail customer* in relation to a *life policy* is made and kept for at least 6 years, unless the customer does not take out the policy.
- (3) An *authorised firm* must ensure that a record of the methodology and set of assumptions prepared and approved by the *approved actuary* for rule 4.3.18 (1) for the firm is made and kept for at least 6 years after the day the methodology or set of assumptions is replaced by a new methodology or set of assumptions.
- (4) An *authorised firm* must ensure that a copy of each policy document given to a *customer* for a *life policy* under rule 4.3.19 is kept for at least 6 years after the day the policy ends.



## **Part 4.4 Investment business—post-contractual obligations**

### **Division 4.4.A Investment business—reporting to customers**

#### **4.4.1 Confirmation notes—provision requirement**

- (1) If an *authorised firm* executes a *transaction* in relation to a *relevant investment* for a *customer*, it must promptly give the *customer* a written confirmation note recording the essential details of the *transaction*.
- (2) This rule is subject to rule 4.4.5 (Confirmation notes—provision requirement exemption).

#### **4.4.2 Confirmation notes—omission of information**

- (1) If—
  - (a) a *person* fails to give an *authorised firm* information that the firm needs for inclusion in a confirmation note for a *transaction* in relation to a *relevant investment* for a *customer*; or
  - (b) the *transaction* executed by an *authorised firm* in relation to a *relevant investment* for a *customer* involves a conversion of a currency into another currency and the firm has not made the conversion;

the firm may omit the information from the confirmation note if its omission is indicated by a statement to the effect that it will be supplied later or that it cannot be supplied, as appropriate.

- (2) If the *authorised firm* gets the information later, the firm must promptly give the information to the *customer*.

**4.4.3 Confirmation notes—when transaction taken to be executed**

- (1) If an *authorised firm* executes a *transaction* that requires a confirmation note and the *execution* is outside normal market hours, the *transaction* is taken to be *executed* on the next *business day*.
- (2) If an *authorised firm* executes a series of *transactions*, all the *transactions* may be taken to be *executed* at the time the last *transaction* is *executed* if a record of the time that each individual *transaction* is *executed* is made, for example, by means of a time stamp.
- (3) If an *authorised firm* aggregates and then subsequently allocates a *customer order* with an *own account order* or with another *customer order*, the *transaction* is taken to be *executed* at the time of allocation under rule 4.5.11 (Aggregation of customer orders—allocation).

**4.4.4 Confirmation notes—content**

A confirmation note for a *transaction* must include the information about the *transaction* required by schedule 2.

**4.4.5 Confirmation notes—provision requirement exemption**

- (1) An *authorised firm* is not required to give a confirmation note to a *customer* for a *transaction* if—
  - (a) the *customer* has told the firm (in writing, if the *customer* is a *retail customer*) that the *customer* does not wish to receive confirmation notes at all or confirmation notes for the *transaction* or *transactions* of that kind; or
  - (b) an arrangement is in place for the *customer* to make a series of payments for the purchase of *units* in a *collective investment fund*; or
  - (c) each of the following applies to the *transaction*:
    - (i) the firm is acting as an *investment manager* for the *customer* in relation to the *transaction*;

- (ii) the *transaction* is not a *contingent liability transaction*;
  - (iii) the firm has taken reasonable steps to ensure that the *customer* does not wish to receive confirmation notes at all or confirmation notes for the *transaction* or *transactions* of that kind; or
  - (d) it would duplicate information already given, or to be given promptly, by another *person* that confirms all the essential details of the *transaction* (other than details relating only to the firm).
- (2) If an *authorised firm* relies on subrule (1) (a) or (c) in relation to the *transaction*, the firm must give the *customer* a periodic statement under rule 4.4.7 (Periodic statements—provision requirement) that contains information that—
- (a) would otherwise have been required to be included in a confirmation note given by the firm to the *customer* for the *transaction*; and
  - (b) is still relevant when the periodic statement is given to the *customer*.

#### **4.4.6 Confirmation notes—recordkeeping**

An *authorised firm* must keep a copy of each confirmation note given to a *customer* for at least 6 years after the day it is given to the *customer*.

#### **4.4.7 Periodic statements—provision requirement**

- (1) If an *authorised firm*—
- (a) acts as an *investment manager* for a *customer*; or
  - (b) operates a *customer*'s account containing *relevant investments*;
- it must promptly, and at the intervals required by rule 4.4.8, give the *customer* a written statement (a *periodic statement*).
- (2) The periodic statement must include the information required by—

- (a) schedule 3 (Content of periodic statements), part S3.1 (Periodic statements—general content requirements); and
  - (b) if during the period covered by the periodic statement the *authorised firm* acted as an *investment manager* for the *customer*—schedule 3, part S3.2 (Periodic statements—investment management); and
  - (c) if the periodic statement covers a *contingent liability transaction*—schedule 3, part S3.3 (Periodic statements—contingent liability transactions); and
  - (d) if the periodic statement covers a *transaction* relating to a *structured capital at risk investment*—schedule 3, part S3.4 (Periodic statements—structured capital at risk investments).
- (3) This rule is subject to rule 4.4.9 (Periodic statements—provision requirement exemption).

#### **4.4.8 Periodic statements—intervals**

An *authorised firm* must give a *customer* a periodic statement at intervals no longer than—

- (a) 6-monthly; or
- (b) if the *customer* is a *retail customer* and the customer's portfolio includes an uncovered open position resulting from a *contingent liability transaction*—monthly; or
- (c) if the *customer* has, on the *customer's* own initiative, agreed on alternative intervals with the firm—the agreed interval or annually, whichever is shorter.

#### **4.4.9 Periodic statements—provision requirement exemption**

An *authorised firm* need not give a *customer* a periodic statement if it would duplicate information already given, or to be given promptly, by another *person*.

#### **4.4.10 Periodic statements—recordkeeping**

An *authorised firm* must keep a copy of each periodic statement given to a *customer* for at least 6 years after the day it is given to the *customer*.

### **Division 4.4.B Cancelling relevant investment contracts—retail customers**

#### **4.4.11 Relevant investment contracts—right to cancel**

If a *retail customer* buys a *relevant investment*, other than a *life policy*, as a result of advice by an *authorised firm* to the customer, the customer has a right, in accordance with this division, to cancel the *relevant investment*.

*Note* Division 6.2.A deals with cancelling *life policies*.

##### **Guidance for r 4.4.11**

An *authorised firm* may voluntarily provide additional cancellation rights, or rights exercisable during a longer period than allowed under this division, but, if it does so, these should be on terms similar to those in this division.

#### **4.4.12 Relevant investment contracts—when cancellation rights can be exercised**

- (1) A *retail customer* may exercise a cancellation right under this division in relation to a *relevant investment*, other than a *life policy*, made by an *authorised firm* with or for the customer only during the cancellation period for the investment.
- (2) For a *relevant investment*, other than a *life policy*, the cancellation period—
  - (a) starts on the later of the following:
    - (i) the day the *authorised firm* gives the *retail customer* the statement required by rule 4.3.1 (c) (Retail investment advice—general requirements) for the policy;

- (ii) the day the *authorised firm* gives the *retail customer* a *product disclosure document* required by any of the following rules:
    - rule 4.2.4 (3) (Initial contact by telephone)
    - rule 4.3.11 (Product disclosure document—provision requirement);
  - (iii) if the *authorised firm* is required to give the *retail customer* a confirmation note by rule 4.4.1 (Confirmation notes—provision requirement) in relation to the *relevant investment*—the day the firm gives the confirmation note to the customer; and
- (b) ends at the end of 14 days after that day.

**4.4.13 Relevant investment contracts—exercising cancellation right**

- (1) This rule applies if a *retail customer* has a right under this division to cancel a *relevant investment*, other than a *life policy*, made by an *authorised firm* with or for the customer.
- (2) The *retail customer* may exercise the cancellation right by giving notice of the exercise of the right to the *authorised firm* in a durable medium.
- (3) Without limiting subrule (2), if the *retail customer* exercises the right in accordance with information given to the customer by the *authorised firm*, the customer is taken to have complied with the subrule.
- (4) The notice need not use any particular form of words and it is sufficient if the intention to exercise the right is reasonably clear from the notice or the notice and the surrounding circumstances.
- (5) The notice need not give reasons for the exercise of the right.
- (6) If the *retail customer* exercises the cancellation right by sending notice to the *authorised firm* at the address given to the customer by the firm for the exercise of the right and the notice is in a durable

form accessible to the firm, the notice is taken to have been given to the firm when it is sent to the firm at that address.

**4.4.14 Relevant investment contracts—consequences of cancellation**

- (1) This rule applies if a *retail customer* exercises a right under this division to cancel a *relevant investment*, other than a *life policy*, made by an *authorised firm* with or for the customer.
- (2) Any contract (a ***relevant contract***) to which the *retail customer* is a party in relation to the *relevant investment* is terminated.
- (3) The *authorised firm* must pay the *retail customer* an amount equal to the total of the amounts paid by the customer under relevant contracts.
- (4) The amount must be paid to the *retail customer* without delay and no later than 30 days after the day the cancellation right is exercised.
- (5) The *retail customer* must, if required by the *authorised firm*, pay the firm an amount of no more than the total of—
  - (a) amounts received, and the value of property or services received, by the customer under relevant contracts; and
  - (b) losses incurred by the firm because of market movements in relation to relevant contracts if the losses are incurred on or before the day the cancellation right is exercised.
- (6) Subrule (5) (b) only applies if the *authorised firm* complied with the disclosure obligations under *COND* in relation to the cancellation right.
- (7) Subrule (5) (b) does not apply in relation to a contract established on a regular or recurring payment basis.
- (8) An amount payable by the *retail customer* under subrule (5) must be paid to the *authorised firm* without delay and no later than 21 days after the day the customer receives written notice from the firm requiring payment of the amount.

- (9) Any amounts payable under this rule are simple contract debts and may be set off against each other.

**4.4.15 Relevant investment contracts cancellation—  
recordkeeping**

- (1) An *authorised firm* must make appropriate records about the exercise of rights to cancel under this division.
- (2) The records must be kept for at least 6 years after the day the right is exercised.



## **Part 4.5                      Other investment related activities**

### **Division 4.5.A              Investment research and investment recommendations**

#### **4.5.1              Investment research—conflicts of interest and impartiality**

- (1) This rule applies if—
  - (a) an *authorised firm* publishes or disseminates *investment research*; and
  - (b) either—
    - (i) the firm holds the research out (in whatever terms) as being an impartial assessment of the value or prospects of the subject matter of the research; or
    - (ii) it is reasonable for those to whom the firm has published or distributed the research to rely on it as an impartial assessment of the value or the prospects of the subject matter of the research.
- (2) The *authorised firm* must do all of the following:
  - (a) establish and implement a policy, appropriate to the firm, for managing effectively the conflicts of interest and *material interests* that might affect the impartiality of the *investment research*;
  - (b) make a record of the policy and keep it for at least 6 years after it ceases to have effect;
  - (c) take reasonable steps to ensure that it and its *employees* comply with the policy;
  - (d) make a written copy of the policy available to any *person* on request;

- (e) take reasonable steps to ensure that the policy remains appropriate and effective.
- (3) The policy must identify the types of *investment research* to which the policy applies and must make provision for systems, controls and procedures that—
- (a) identify conflicts of interest and *material interests* that might affect the impartiality of the *investment research* to which the policy relates; and
  - (b) manage effectively conflicts of interest and *material interests*, to the extent that they arise or might arise within the *authorised firm*, in relation to at least each of the following:
    - (i) the supervision and management of *investment analysts*;
    - (ii) the remuneration structure for *investment analysts*;
    - (iii) the extent to which *investment analysts* may become involved in activities other than the preparation of *investment research*;
    - (iv) the extent to which inducements offered by *issuers of securities*, or other *persons* with *material interests* in the subject matter of *investment research*, may be accepted by *investment analysts* or senior *employees* of the *authorised firm*;
    - (v) the *persons* who may comment on draft *investment research* before publication, and the process for taking account of their comments;
    - (vi) the timing and manner of publication and distribution of *investment research* and of the communication of its substance;
    - (vii) what information or disclosures are appropriate to include in *investment research* (taking appropriate account of matters required by law); and
  - (c) clearly indicate the extent to which the firm's policy relies on *Chinese walls* or other information barriers.

**4.5.2 Investment research recommendations—basic requirements**

- (1) An *authorised firm* must—
  - (a) take reasonable care to ensure that a *research recommendation* that is produced or disseminated by it in relation to *relevant investments* is presented fairly and is not misleading; and
  - (b) disclose any conflicts of interest or *material interests* that the firm has in relation to the *relevant investments*.
- (2) An *authorised firm* must, in a *research recommendation* produced by it—
  - (a) disclose clearly and prominently the identity of the *person* responsible for its production, and in particular—
    - (i) the name and job title of the individual who prepared the *research recommendation*; and
    - (ii) the firm's name; and
  - (b) include the firm's regulatory status in a form required by *GENE*.

*Note* See *GENE*, r 3.1.
- (3) Subrule (2) may be complied with in relation to a non-written *research recommendation* by referring to a place where the disclosures can be easily accessed by the public, for example, the *authorised firm's* web site.
- (4) An *authorised firm* must, for any *research recommendation* produced or disseminated by it, take reasonable care to ensure that—
  - (a) facts in a *research recommendation* are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information; and
  - (b) its sources for a *research recommendation* are reliable or, if there is any doubt about whether a source is reliable, this is clearly indicated; and

- (c) all projections, forecast and price targets in a *research recommendation* are clearly labelled as such and the material assumptions made in producing or using them are indicated; and
  - (d) the substance of a *research recommendation* can be substantiated as reasonable at the *Regulatory Authority's* request.
- (5) The requirements of subrule (4) do not apply in relation to a non-written *research recommendation* if they would be disproportionate in relation to the length of the *research recommendation*.

#### **4.5.3 Investment research recommendations—additional requirements**

An *authorised firm* must comply with the additional requirements mentioned in schedule 4 that apply to it.

#### **4.5.4 Investment research recommendations—recordkeeping**

- (1) An *authorised firm* must make a record of—
  - (a) each *research recommendation* it produces, including details of how the substance of the *research recommendation* can be substantiated as reasonable; and
  - (b) each *research recommendation* it disseminates.
- (2) The record of a *research recommendation* must be kept for at least 6 years after the day the *research recommendation* is last disseminated.

### **Division 4.5.B Personal account transactions**

#### **4.5.5 Personal account transaction—systems and controls**

- (1) An *authorised firm* must establish and maintain systems and controls to ensure that—

- (a) a *personal account transaction* undertaken by any of its *employees* or agents does not conflict with the firm's duties to its *customers* under the *regulatory system*; and
  - (b) it receives prompt notification of each *personal account transaction* entered into by any of its *employees* or agents or is otherwise able to identify it, and makes a record of it; and
  - (c) an *employee* or agent who is prevented from entering into a *transaction* for the *employee's* or agent's own account does not (except in the proper course of the *employee's* or agent's employment or authority) arrange for another *person* to enter into the *transaction*, or communicate any opinion to another *person*, if the *employee* or agent knows or reasonably ought to know that the other *person* will, as a result, be likely to enter into the *transaction* or arrange for another *person* to do so.
- (2) Subrule (1) does not apply in relation to an *employee* or agent if the *authorised firm* has taken reasonable steps to decide that the *employee* or agent will not be involved to any material extent in, or have access to information about, the firm's *investment business*.
- (3) The systems and controls established and maintained by the *authorised firm* under subrule (1) must include—
- (a) drawing the restrictions on *personal account transactions*, and any general permissions to *execute personal account transactions*, to the attention of relevant *employees* or agents by written notice; and
  - (b) making compliance with the systems and procedures a term of each relevant *employee's* or agent's employment contract, contract for service, or other employment or appointment arrangement; and
  - (c) keeping a restricted list of *relevant investments* in relation to which the firm may have *inside information* and ensuring that only relevant *employees* and agents have access to the list; and

- (d) ensuring that a *relevant person* may not undertake *personal account transactions* in relation to *relevant investments* on the restricted list unless—
  - (i) the *transaction* is for the purposes of realising the cash value of a holding or position undertaken to meet an obligation of the *relevant person* not related to the firm's business; and
  - (ii) the firm has given its express written permission for the *transaction*.

#### **4.5.6 Personal account transaction—recordkeeping**

- (1) An *authorised firm* must make records of each of the following:
  - (a) notifications received under rule 4.5.5 (1) (b);
  - (b) any restrictions on *personal account transactions* that it has in place from time to time;
  - (c) the basis on which the firm makes a decision under rule 4.5.5 (2) that an *employee* or agent will not be involved to any material extent in, or have access to information about, the firm's *investment business*;
  - (d) any permission it gives an *employee* or agent to execute a *personal account transaction* in accordance with systems and controls it establishes and maintains under rule 4.5.5 (3).
- (2) The *authorised firm* must keep the records for at least—
  - (a) for records of a notification mentioned in subrule (1) (a)—6 years after the day the notification is received; and
  - (b) for records of a restriction mentioned in subrule (1) (b)—6 years after the day the restriction is lifted; and
  - (c) for records of a decision mentioned in subrule (1) (c) in relation to an *employee* or agent—6 years after the day the *employee* or agent ceases to be employed or retained by the firm; and

- (d) for records of a permission mentioned in subrule (1) (d)—6 years after the day the permission is given.

## **Division 4.5.C Dealing and managing**

### **4.5.7 Dealing and managing—best execution**

- (1) If an *authorised firm* agrees, or decides in the exercise of its discretion, to *execute any transaction* with or for a *customer* in relation to a *relevant investment*, it must provide best *execution*.
- (2) However, the *authorised firm* need not provide best *execution* if—
  - (a) it only arranges the *transaction* for the *customer*; or
  - (b) the market in the *relevant investment* is insufficient to allow for meaningful price comparison; or
  - (c) the *customer* is a *business customer* and the firm has agreed with the *customer* that it will not provide best *execution*; or
  - (d) another *person* is responsible for the *execution* of a *transaction* and has undertaken to provide best *execution*.
- (3) To provide best *execution* for the *transaction*, the *authorised firm* must—
  - (a) take reasonable care to find out the best available price in the relevant market at the time for *transactions* of the same kind and size; and
  - (b) *execute* the *customer order* for the *transaction* at a price that is no less advantageous to the *customer*, unless the firm has taken reasonable steps to ensure that it would be in the *customer's* best interests not to do so.
- (4) To take reasonable care under subrule (3) (a), the *authorised firm* must—
  - (a) calculate the best *execution* price before any previously disclosed *charges* that might be payable; and
  - (b) not take a mark-up or mark-down; and

- (c) pass on to the *customer* the price at which it *executes* the *transaction* to meet the *customer order*; and
- (d) if it can access prices displayed by different exchanges and trading platforms and make a direct and immediate comparison—*execute* the *customer order* at the best price available if this is in the best interest of the *customer*.

#### **4.5.8 Dealing and managing—timely execution**

- (1) If an *authorised firm* agrees, or decides in its discretion, to *execute* a *transaction* for an *existing customer order* in relation to a *relevant investment*, it must *execute* the order as soon as practical.
- (2) However, subrule (1) does not apply if the *authorised firm* has taken reasonable steps to ensure that postponing the *execution* of a *transaction* for the *existing customer order* is in the best interests of the *customer*.

##### **Guidance for r 4.5.8 (2)**

Factors relevant to whether the postponement of an *existing customer order* may be in the best interests of the *customer* include the following:

- (a) whether the *customer order* is received outside of normal trading hours;
- (b) whether a foreseeable improvement in the level of liquidity in the *relevant investment* is likely to enhance the terms on which the *authorised firm* *executes* the *transaction* for the *customer order*;
- (c) whether *executing* the *transaction* for the *customer order* as a series of partial *transactions* over a period of time is likely to improve the terms on which the *transaction* as a whole is *executed*.

#### **4.5.9 Dealing and managing—recordkeeping**

- (1) An *authorised firm* must ensure, by establishing and maintaining appropriate procedures, that it promptly records adequate information in relation to each of the following:
  - (a) the receipt of *customer orders*;
  - (b) the exercise of its discretion to decide to *execute transactions* for *customer orders*;
  - (c) the *execution* of *transactions* for *customer orders*;



- (d) the passing of *customer orders* to other *persons* for *execution of transactions*;
  - (e) the *execution of transactions* for *own account orders*.
- (2) Subrule (1) (c) and (d) do not apply to the *authorised firm* if it is only arranging a *transaction* for a *customer*.
  - (3) The records must, as a minimum, record the information required by schedule 5.
  - (4) The *authorised firm* must keep records made under this rule for a *customer order* or *own account transaction* for at least 6 years after the day the *transaction* (or the last of the *transactions*) for the order is *executed*.

#### **4.5.10 Dealing and managing—aggregation of customer orders**

An *authorised firm* may aggregate a *transaction* for a *customer order* for a *customer* with *transactions* for *customer orders* for other *customers* or for *own account orders* if—

- (a) the firm believes on reasonable grounds that it is unlikely that the aggregation will operate to disadvantage the *customer* or any of the other *customers* whose *transactions* are to be aggregated; and
- (b) the firm has disclosed orally or in writing to the *customer* that the *transaction* for the *customer* order may be aggregated and that the effect of aggregation may sometimes operate to the *customer's* disadvantage; and
- (c) the firm has made a record of the intended basis of allocation and the identity of each *customer* before the *transactions* are aggregated; and
- (d) the firm has in place a written policy on aggregation and allocation that is consistently applied and includes a process that will be adopted if only part of the aggregated order has been filled.

#### **4.5.11 Aggregation of customer orders—allocation**

- (1) This rule applies if—
  - (a) an *authorised firm* aggregates a *transaction* for a *customer order* for a *customer* with *transactions* for *customer orders* for other *customers* or for *own account orders*; and
  - (b) part or all of the aggregated order is filled.
- (2) The *authorised firm* must promptly allocate the *relevant investment* involved in the aggregated order in accordance with rule 4.5.13 (1) (Aggregation of customer orders—fair allocation etc).

*Note* See r 4.5.12 for the requirements to be satisfied for prompt allocation.

#### **4.5.12 Aggregation of customer orders—prompt allocation**

For rule 4.5.11, to allocate a *relevant investment* promptly an *authorised firm* must—

- (a) allocate the *relevant investment* within 1 *business day*; or
- (b) if only *business customers* or *market counterparties* are affected by the allocation and each of them agrees—allocate the *relevant investment* within 5 *business days*.

#### **4.5.13 Aggregation of customer orders—fair allocation etc**

- (1) For rule 4.5.11 (Aggregation of customer orders—allocation), an *authorised firm* must—
  - (a) allocate *relevant investments* in accordance with the intended basis of allocation recorded under rule 4.5.10 (c) (Dealing and managing—aggregation of customer orders); and
  - (b) ensure the allocation is done fairly and uniformly by not giving excessive preference to itself or to any *person* for whom it deals; and
  - (c) if the aggregated order includes *customer orders* and *own account orders*—give priority to satisfying *customer orders* if all the orders cannot be satisfied, unless it can demonstrate on reasonable grounds that without its own participation it could

not have *executed* the *customer orders* on such favourable terms, or at all.

- (2) The *authorised firm* must make a record of each of the following:
  - (a) the date and time of the allocation;
  - (b) the *relevant investment*;
  - (c) the identity of each *customer* affected by the aggregation;
  - (d) the amount allocated to each *customer* affected by the aggregation and to the firm;
  - (e) if applicable, the agreement of each *business customer* or *market counterparty* for rule 4.5.12 (b) (Aggregation of customer orders—prompt allocation).
- (3) The *authorised firm* must keep the records for at least 6 years after the day the *relevant investments* are aggregated.

#### **4.5.14 Dealing and managing—customer order priority**

- (1) An *authorised firm* must *execute transactions* for *existing customer orders* and *own account orders* in relation to *relevant investments* fairly and in proper turn.
- (2) The *authorised firm* does not breach subrule (1) by *executing* an *own account order* in relation to the *relevant investments* while it has an *existing customer order* in relation to the *relevant investments* if—
  - (a) it receives the *existing customer order* after it had decided to deal for itself; or
  - (b) the *employee* or agent taking the decision to deal for the firm was unaware of the *existing customer order* when making the decision; or
  - (c) the firm believes on reasonable grounds that by postponing the *transaction* for the *existing customer order* it is likely to improve the terms on which the *transaction* for the order will be *executed*.

- (3) If subrule (2) (c) applies, the *authorised firm* must take care to ensure that *customer orders* that are advanced because of the postponement are also treated fairly.

#### **4.5.15 Dealing and managing—excessive dealing and switching**

- (1) An *authorised firm* must not—
- (a) in the exercise of its discretion, *execute a transaction* in relation to a *relevant investment* for a *customer*; or
  - (b) advise a *customer* to enter into a *transaction* in relation to a *relevant investment*; or
  - (c) advise a *retail customer* to switch within a *packaged product* or between *packaged products* or make or arrange a switch that gives effect to such advice; or
  - (d) in the exercise of its discretion, make or arrange a switch within a *packaged product* or between *packaged products* for a *retail customer*;
- with such a frequency, or in such amounts, that the *transactions* may be regarded as excessive.
- (2) In complying with subrule (1), the *authorised firm* must be able to demonstrate that the *transactions* were fair, reasonable and in the *customer's* best interests when they were entered into, viewed both in isolation and in the context of earlier *transactions*.

#### **4.5.16 Dealing and managing—non-market price transactions**

- (1) An *authorised firm* must not enter into a *non-market-price transaction* with or for a *customer*, unless it has taken reasonable steps to ensure that the *customer* is not entering into the *transaction* for an improper purpose.
- (2) An *authorised firm* must—
- (a) make a record of the information it has obtained in satisfying subrule (1) in relation to a *non-market price transaction*; and

- (b) must keep the record for at least 6 years after the day the information is obtained.
- (3) This rule does not apply to a *non-market-price transaction* if it is subject to the rules of an *eligible exchange*.

**4.5.17 Dealing and managing—realising retail customer’s assets**

An *authorised firm* must not realise a *retail customer’s* assets unless it is legally entitled to realise the assets and has either—

- (a) set out in the firm’s *terms of business* for the customer—
  - (i) the action it may take to realise assets of the customer; and
  - (ii) the circumstances in which it may take the action; and
  - (iii) each asset (if relevant) or type of asset over which it may exercise its rights to realise assets; or
- (b) given the customer written or oral notice of its intention to exercise its rights at least 3 *business days* before it exercises them.

## **Chapter 5            Conduct of non-investment insurance mediation business**

### **Part 5.1            Non-investment insurance— general**

#### **5.1.1            Application—ch 5**

This chapter applies to all *authorised firms* conducting *insurance mediation business* in relation to *non-investment insurance contracts* in or from the *QFC*.

*Note*        See r 6.1.2 (2) for the application of this chapter to the effecting of a *non-investment contract of insurance* by an *authorised firm* in an *execution-only transaction*.

#### **5.1.2            Authorised firm acting as intermediary for person outside State—general insurance business**

- (1) This rule applies in relation to an *authorised firm* that is acting as intermediary in relation to *general insurance business* for a *person* outside the *QFC* and the *State*.
- (2) The *authorised firm* must ensure that it complies with every law, rule and regulation of the *State* applying in relation to *general insurance business*.

## **Part 5.2                      Non-investment insurance— initial client contact**

### **5.2.1            Providing information about firm—whose agent?**

When an *authorised firm* first makes contact with a *customer* for the purpose of conducting *insurance mediation business* in relation to *non-investment insurance contracts*, the firm must disclose whether it acts—

- (a) for an *insurer* or any other *person*; or
- (b) independently for the *customer*.

### **5.2.2            Status disclosure—requirement**

- (1) An *authorised firm* must not finalise a *non-investment insurance contract* with or for a *customer* unless the firm has disclosed the information required by rule 5.2.3 to the *customer*.
- (2) This rule is subject to rule 5.2.6 (Status disclosure—initial contact by telephone) and rule 5.2.7 (Status disclosure—exemption).

### **5.2.3            Status disclosure—content**

For rule 5.2.2 (Status disclosure—requirement), an *authorised firm* must disclose the following information:

- (a) the firm's name and address;
- (b) the firm's regulatory status in a form required by *GENE*;  
*Note*     See *GENE*, r 3.1.
- (c) unless the firm is an *insurer*, details of any direct or indirect holdings that the firm has that represent more than 10% of the voting rights or capital in an insurer;
- (d) unless the firm is an *insurer*, details of any direct or indirect holdings that an insurer or its *parent entity* has that represent more than 10% of the voting rights or capital in the firm;

- (e) whether the firm has given, or will give, information or advice about the *non-investment insurance contract* offered to the *customer* on the basis of—
  - (i) a fair analysis of the market; or
  - (ii) *non-investment insurance contracts* available from a limited number of insurers; or
  - (iii) non-investment insurance contracts available from a single insurer;
- (f) if the *non-investment insurance contract* has not been selected on the basis of either subrule (e) (i) or (iii)—that the *customer* can ask for a copy of the list of the insurers the firm selects from or deals with in relation to contracts of the type offered;
- (g) details of the amount of any fees charged by the firm in relation to the *non-investment insurance contract* or, if an actual amount of a fee charged by the firm cannot be given, how the *customer* can calculate the total amount;
- (h) the availability of the firm’s internal complaint-handling procedures and how a complaint may be made to the firm;
- (i) the availability of the *customer dispute resolution scheme*.

#### **5.2.4 Status disclosure—scope of advice**

- (1) An *authorised firm* must not hold itself out as giving information or advice to a *customer* about a *non-investment insurance contract* on the basis of a fair analysis of the market unless—
  - (a) it has considered a sufficiently large number of *non-investment insurance contracts* available in the relevant sector or sectors of the market; and
  - (b) the consideration is based on criteria that reflect adequate knowledge of *non-investment insurance contracts* available in the relevant sector or sectors of the market.
- (2) If an *authorised firm* gives information or advice to a *customer* about a *non-investment insurance contract* on the basis of non-



*investment insurance contracts* available from a limited number of insurers or a single insurer, the firm must—

- (a) disclose whether it is contractually obliged to conduct *insurance mediation business* this way; and
- (b) keep a list of the insurers it selects from or deals with for each type of *non-investment insurance contract* it deals with; and
- (c) give a copy of the list to a *customer* in a durable medium on request.

#### **5.2.5 Status disclosure—form**

- (1) An *authorised firm* must disclose the information required by rule 5.2.3 (Status disclosure—content) in writing.
- (2) However, the *authorised firm* may give the information orally to the *customer* before the *customer* enters into the *non-investment insurance contract* if—
  - (a) the *customer* asks the firm to give the information orally; or
  - (b) the *customer* requires immediate cover.
- (3) If subrule (2) applies, the *authorised firm* must give the information to the *customer* in writing promptly after the *customer* enters into the *non-investment insurance contract*.

#### **5.2.6 Status disclosure—initial contact by telephone**

- (1) This rule applies if—
  - (a) an *authorised firm's* initial contact with a *customer* is by telephone; and
  - (b) the *customer* wishes to finalise a *non-investment insurance contract* during the telephone call; and
  - (c) the *customer* gives explicit agreement to finalising the contract on the basis of limited disclosure.
- (2) The *authorised firm* may finalise the *non-investment insurance contract* with or for the *customer* without complying with rule 5.2.2

(Status disclosure—requirement) if, during the call, the following information is given to the *customer*:

- (a) the firm's name;
  - (b) if the call is initiated by the firm—the commercial purpose of the call;
  - (c) the name of the *person* in contact with the *customer* and the *person's* link with the firm;
  - (d) that other information is available on request and the nature of that information.
- (3) If the *authorised firm* finalises the *non-investment insurance contract* with or for the *customer* under subrule (2), the firm must give the information mentioned in rule 5.2.3 (Status disclosure—content) to the *customer* in writing promptly after the telephone call.

### **5.2.7 Status disclosure—exemption**

Rule 5.2.2 (Status disclosure—requirement) does not apply in relation to any *insurance mediation business* conducted by an *authorised firm* for a *customer* in the course of renewing or amending a *non-investment insurance contract*, if the information required by this part has already been given to the *customer* in relation to the initial contract and is still accurate and up-to-date.

#### **Guidance for r 5.2.7**

For certain types of *general insurance contracts*, it is customary for a *retail customer* to seek quick quotes that the customer can compare. In these circumstances, it is not necessary for an *authorised firm* to give the status disclosure information when the quick quote is provided if the quote cannot be accepted (and a contract cannot be formed) without the firm obtaining further information from the customer.

### **5.2.8 Status disclosure—additional disclosure on request**

An *authorised firm* must, on a *customer's* request, disclose to the *customer*—

- (a) all *commissions* and other economic benefits accruing to the firm, or any member of the same *group*, from any business transacted for the *customer*; and
- (b) any payment that it receives for providing to, or securing for, its *customer* any additional insurance-related services.

**Guidance for r 5.2.8**

Rule 5.2.8 does not apply to premiums, but does apply to fees (including any fees that an *authorised firm* charges if it receives no *commission* from an insurer in relation to a *contract of insurance*).

**5.2.9 Giving information about firm—merely introducing**

- (1) This rule applies if contact by an *authorised firm* with a *customer* is limited to introducing the *customer* to another *authorised firm*.
- (2) The *authorised firm* making the introduction must give the *customer* the following information about itself not later than a reasonable time before making the introduction:
  - (a) the firm's name and address;
  - (b) the firm's regulatory status in a form required by *GENE*;  
*Note* See *GENE*, r 3.1.
  - (c) details of fees (if any) that the *customer* will be charged for the service being provided;
  - (d) whether the firm is a member of the same *group* as the *authorised firm* to whom the introduction is to be made.

## **Part 5.3 Non-investment insurance— advice to retail customers**

### **5.3.1 Non-investment insurance advice—general requirements**

- (1) If an *authorised firm* gives advice on a *non-investment insurance contract* to a *retail customer*, it must—
  - (a) take reasonable steps to ensure that it has sufficient personal and financial information about the customer to give the advice (see rule 5.3.2); and
  - (b) take reasonable steps to ensure that the advice is suitable for the customer's demands and needs (see rule 5.3.3); and
  - (c) give the customer a statement of why the firm considers the advice to be suitable for the customer (see rule 5.3.4).
- (2) An *authorised firm* may advise on a *non-investment insurance contract* that does not meet all of the *retail customer's* demands and needs if—
  - (a) there is no *non-investment insurance contract* within the firm's scope, as disclosed to the customer in accordance with rule 5.2.3 (e) (Status disclosure—content), that meets all of the customer's demands and needs; and
  - (b) the firm identifies to the customer, when the advice is made, the demands and needs that are not met by the contract that it advises.
- (3) If an *authorised firm* is instructed by a *retail customer* to obtain insurance that is contrary to the advice that the firm has given to the customer, the firm must obtain written confirmation of the customer's instructions before arranging or buying the insurance.

### **5.3.2 Non-investment insurance advice—know your customer**

- (1) For rule 5.3.1 (1) (a) (Non-investment advice—general requirements), an *authorised firm* must—

- (a) obtain from a *retail customer* the information about the customer's personal and financial circumstances and objectives that might reasonably be expected to be relevant; and
  - (b) explain to the customer the customer's duty to disclose all circumstances material to the *non-investment insurance contract* and the consequences of any failure to make a disclosure, both before the insurance starts and throughout the term of the contract.
- (2) If the *authorised firm* is aware that the *retail customer's* existing insurance cover is likely to significantly affect the suitability of any advice that the firm might make, the firm must either—
- (a) not give advice to the customer until details of the insurance cover are made available to the firm; or
  - (b) if it gives advice—make clear to the customer that it may not be suitable because the firm has not taken into account full details of the customer's existing insurance cover.

### **5.3.3 Non-investment insurance advice—suitability and risk**

- (1) For rule 5.3.1 (1) (b) (Non-investment insurance advice—general requirements), an *authorised firm* must ensure that the advice it gives to a *retail customer* is suitable for the customer having regard to—
- (a) the information held by the firm; and
  - (b) any requirement of, or any other relevant facts about, the customer of which the firm is aware or ought reasonably to be aware.
- (2) In assessing whether a *non-investment insurance contract* is suitable to meet a *retail customer's* demands and needs, an *authorised firm* must take into account at least each of the following matters:
- (a) whether the level of cover is sufficient for the risks that the customer wishes to insure;

- (b) the cost of the contract, if this is relevant to the customer's demands and needs;
- (c) the relevance of any exclusions, excesses, limitations or conditions in the contract.

**5.3.4 Non-investment insurance advice—provision of suitability assessment**

- (1) For rule 5.3.1 (1) (c) (Non-investment insurance advice—general requirements), the statement given by an *authorised firm* to a *retail customer* must include the following information:
  - (a) the customer's demands and needs;
  - (b) whether or not the firm has recommended a *non-investment insurance contract*;
  - (c) if applicable, an explanation of the reasons for recommending that contract.
- (2) The *authorised firm* must give the statement to the *retail customer* in writing before finalising the *non-investment insurance contract* with or for the customer.
- (3) However, the *authorised firm* may give the information required by subrule (1) to the *retail customer* orally if—
  - (a) the customer asks the firm to give the information orally; or
  - (b) the customer requires immediate cover.
- (4) If subrule (3) applies, the *authorised firm* must give the statement mentioned in subrule (1) to the *retail customer* in writing promptly after the *non-investment insurance contract* is finalised.
- (5) Also, if the *non-investment insurance contract* is finalised during a telephone call with the *retail customer*, the *authorised firm*—
  - (a) may give the information required by subrule (1) to the customer orally during the call; but
  - (b) must give the statement mentioned in that subrule to the customer in writing promptly after the call.

**5.3.5 Non-investment insurance advice—recordkeeping**

- (1) If an *authorised firm* gives advice to a *retail customer* about a *non-investment insurance contract*, the firm must make a record of the advice and keep it for at least 6 years after the day it gives the advice.
- (2) However, the *authorised firm* need not keep the record if the *retail customer* does not enter into a *non-investment insurance contract* after being given the advice.
- (3) An *authorised firm* must keep a copy of each written statement given to a *retail customer* under rule 5.3.4 for at least 6 years after the day it is given to the customer.

## **Part 5.4                      Non-investment insurance— product disclosure**

### **5.4.1            Non-investment insurance product disclosure— requirement**

- (1) An *authorised firm* must, not later than a reasonable time before finalising a *non-investment insurance contract* with or for a *customer*, give to the *customer* sufficient information to enable the *customer* to make an informed decision about the contract being proposed.
- (2) If the *customer* is a *retail customer*—
  - (a) the information must include the information required by rule 5.4.3 (Non-investment product disclosure—content); and
  - (b) the *authorised firm* must draw the *customer's* attention to the importance of reading this information, and in particular the information on significant or unusual exclusions or limitations.
- (3) If an *authorised firm* finalises a *non-investment insurance contract* with or for a *customer*, the firm must, immediately after finalising the contract, give the *customer*, in a durable medium—
  - (a) a policy document containing all the terms of the contract; and
  - (b) information about the claims-handling process; and
  - (c) information about whether there is a right to cancel and, if there is a right to cancel, the consequences of exercising the right, and enough details to enable the right to be exercised by a *customer*.
- (4) If information required by another part of this chapter to be given to a *customer* duplicates information required to be given to the *customer* by this part, the information need not be given twice.
- (5) However, subrule (4) is subject to rule 5.4.2 (4).



- (6) To remove any doubt, this rule applies in relation to the initial finalisation of a *non-investment insurance contract* and the finalisation of each renewal of the contract.

#### **5.4.2 Non-investment insurance product disclosure—form**

- (1) An *authorised firm* must give the information required by rule 5.4.1 (1) and (2) to a *customer* in writing.
- (2) However, the *authorised firm* may give the information orally to the *customer* before the *customer* enters into the *non-investment insurance contract* if—
  - (a) the *customer* asks the firm to give the information orally; or
  - (b) the *customer* requires immediate cover.
- (3) If subrule (2) applies, the *authorised firm* must give the information to the *customer* in writing promptly after the *customer* enters into the *non-investment insurance contract*.
- (4) If an *authorised firm* gives information required by rule 5.4.1 (1) and (2) to a *customer* in writing, the information must be—
  - (a) set out in a separate document; or
  - (b) set out in a prominent place in another document, separate from the other content of that document and clearly identifiable as key information that the *customer* should read.

#### **5.4.3 Non-investment insurance product disclosure—content**

For rule 5.4.1 (2) (a) (Non-investment insurance product disclosure—requirement), the information given by an *authorised firm* to a *retail customer* must include the following information:

- (a) the name of the proposed insurer;
- (b) the type of insurance and cover proposed;
- (c) significant features and benefits of the proposed cover;
- (d) significant or unusual exclusions or limitations of the proposed cover;

- (e) if the information is being given to the customer in writing—where the exclusions or limitations mentioned in paragraph (d) are located in the policy document;

*Note* See r 5.4.1 (3) for the requirement to give a *customer* a policy document.

- (f) the term of the proposed contract;
- (g) if the proposed contract is for a term of longer than 1 year—a statement, if relevant, that the customer may need to review and update the cover periodically to ensure it remains adequate;
- (h) a telephone number or address to which a claim may be notified under the proposed contract;
- (i) the total amount of the premium for the proposed contract or, if the premium cannot be stated, how the customer can calculate the total amount;
- (j) if the proposed contract is for a term of longer than 1 year—details of the period for which the premium is valid, whether it will be reviewed at certain times or at the end of certain periods and, if so, when it will be reviewed;
- (k) fees and administrative charges (if any) payable by the customer in addition to the premium;
- (l) if the proposed contract is connected with the purchase of other goods and services—
  - (i) the premium for the proposed contract, separate from all other prices in relation to the other goods or services, if an additional price is charged; and
  - (ii) whether purchase of the proposed contract is a requirement of purchasing the other goods or services;
- (m) the total price to be paid by the customer for the proposed contract or, if an exact amount cannot be stated, how the customer can calculate the total amount;

- (n) the availability of the firm's internal complaint-handling procedures and how a complaint may be made to the firm;
- (o) the availability of the *customer dispute resolution scheme*;
- (p) whether there is a right to cancel and, if there is a right to cancel, the consequences of exercising the right, and enough details to enable the right to be exercised by a *customer*;
- (q) if the *non-investment insurance contract* is to be effected by a *person* other than an *authorised firm* (the *insurer*)—the following:
  - (i) a statement to the effect that the insurer is not authorised or regulated by the *Regulatory Authority*;
  - (ii) an explanation of any differences between the cancellation rights (if any) applying in relation to the contract (including the length of any period to exercise the rights) and those that would be provided under *COND* if the insurer were an *authorised firm*;
  - (iii) a warning to the effect that the claims handling procedures applying in relation to the contract may differ from those provided under *COND*;
- (r) a statement that the information mentioned in paragraphs (a) to (p) does not contain the full terms of the *non-investment insurance contract*, which can be found in the policy document.

## **Part 5.5            Non-investment insurance—post-contractual obligations**

### **5.5.1            Non-investment insurance—renewals**

- (1) This rule applies if an *authorised firm* has finalised a *non-investment insurance contract* with or for a *customer*.
- (2) The *authorised firm* must give the *customer* adequate advance notice of the end of the term of the contract to allow the *customer* sufficient time to consider whether continuing cover is required.
- (3) Subrule (2) does not apply to the *non-investment insurance contract* if—
  - (a) the contract is for a term of less than 1 *month*; or
  - (b) the contract terms provide for automatic renewal on the same terms; or
  - (c) the *authorised firm* has reason to believe that the *customer* does not wish to renew the policy or renew the policy through the firm; or
  - (d) the *authorised firm* has told the *customer* that it does not wish to act for the *customer* on renewal; or
  - (e) the *customer* has already been told that the insurer will not invite renewal; or
  - (f) the *customer* asks for an extension of the contract for a term of less than the term of the original contract.
- (4) If the *customer* is a *retail customer*, adequate notice is not less than 21 days before the day the term of the policy ends.
- (5) If the *customer* is a *retail customer*, the *authorised firm* must do 1 of the following before the start of the 21-day period mentioned in subrule (4):
  - (a) if the firm is willing to invite renewal of the policy—take reasonable steps to give the customer information about

- renewal terms in a durable medium in accordance with subrule (6);
- (b) if the insurer is not willing to invite renewal—take reasonable steps to tell the customer;
  - (c) tell the customer that the firm no longer deals with the insurer.
- (6) For subrule (5), the *authorised firm* must give the following information to the *retail customer*:
- (a) a statement of any changes to the terms of the policy;
  - (b) an explanation of the changes, if necessary;
  - (c) the total amount of the premium for the policy or, if the premium cannot be stated, how the customer can calculate the total amount;
  - (d) whether there is a right to cancel and, if there is a right to cancel, the consequences of exercising this right, and enough details to enable the right to be exercised by a customer;
  - (e) a prominent statement of the customer’s right to ask for a new policy document.

### **5.5.2 Non-investment insurance—mid-term changes**

- (1) This rule applies if—
- (a) an *authorised firm* has finalised a *non-investment insurance contract* with or for a *customer*; and
  - (b) during the term of the contract either—
    - (i) the terms of the contract change (or are proposed to change); or
    - (ii) the premium or any other amount payable by the *customer* under the contract changes (or is proposed to change) otherwise than because of the operation of a formula previously disclosed to the *customer*.

- (2) The *authorised firm* must tell the *customer* about the change (or proposed change) in a durable medium.
- (3) The *authorised firm* must take reasonable steps to comply with subrule (2) not later than a reasonable time before the change takes effect.
- (4) If the *customer* is a *retail customer* and the change relates to the terms of the contract, the *authorised firm* must explain, in a durable medium, any implications of the change when telling the *customer* about the change.
- (5) If the change is being made at the *customer's* request, the *customer* is a *retail customer* and it is impracticable to explain the implications of the change in a durable medium before the change takes effect, the *authorised firm* must take reasonable steps to give the explanation orally to the customer before the change takes effect.
- (6) If the change is being made at the *customer's* request, the *authorised firm* must pay any amount owing to the *customer* under the policy to the *customer* without delay.

### **5.5.3 Non-investment insurance—claims handling by insurance intermediaries**

- (1) An *authorised firm* must act with appropriate care, skill and diligence in acting for a *client* in relation to a claim on a *non-investment insurance contract*.
- (2) An *authorised firm* must not, in relation to a claim on a *non-investment insurance contract*—
  - (a) put itself in a position where its own interest, or its duty to any *person* for whom it acts, conflicts with its duty to any *client*, unless—
    - (i) it made proper disclosure to the *client* of all information needed to put the *client* in a position where the *client* can give informed agreement to the arrangement; and
    - (ii) it has obtained the prior informed agreement of the *client*;

- (b) decline to act for the *person* or *client* unless, in the particular circumstances of the case, disclosure and informed agreement are insufficient to reconcile the conflict.
- (3) If an *authorised firm* acts for an insurer and not a *client* in relation to a claim on a *non-investment insurance contract* that it arranged, the firm must tell the *client* that in relation to the claim, it is acting on behalf of the insurer, and not the *client*.

**Guidance for r 5.5.3 (3)**

Rule 5.5.3 (3) would apply, for example, if an *authorised firm* has delegated authority for claims handling and deals with a claim in relation to a contract that it sold to a *client*, but is not acting for the *client* in relation to the claim.

- (4) If an *authorised firm* is notified of a claim on a *non-investment insurance contract* that it arranged, and the insurer has not given it authority to deal with the claim, the firm must—
  - (a) forward the notification to the insurer promptly; or
  - (b) tell the *client* immediately that it cannot deal with the notification.

## **Part 5.6                      Non-investment insurance— miscellaneous**

### **5.6.1            Non-investment insurance—excessive charges**

An *authorised firm* must ensure that its charges to a *retail customer* made in relation to the conduct of *insurance mediation business* in relation to a *non-investment insurance contract* are not excessive.

### **5.6.2            Non-investment insurance—communication with joint policyholders**

If a *contract of insurance* is effected jointly, the information required by any rule of this chapter may be given only to the *client* named first in the contract.

### **5.6.3            Non-investment insurance—group policies**

- (1) This rule applies if an *authorised firm* finalises a *non-investment insurance contract* with or for a *customer* under which *persons* other than the *customer* can become policyholders (a ***group policy***).
- (2) The *authorised firm* must, promptly after finalising the contract—
  - (a) give the *customer* a policy document for the contract that contains the terms of the contract; and
  - (b) tell the *customer* that the *customer* should tell each other policyholder that a copy of the policy document is available from the *customer* on request.
- (3) If the *customer* is a *retail customer* or a *person* who can become a policyholder could be a *retail customer*, the *authorised firm* must also, promptly after finalising the contract—
  - (a) give the *customer* a policy summary for the contract containing the information mentioned in rule 5.4.3 (Non-investment insurance product disclosure—content); and



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- (b) tell the *customer* that the *customer* should give a copy of the policy summary to each other policyholder who could be a *retail customer*; and
- (c) if the contract replaces a previous group policy—tell the *customer* that the *customer* should also tell each other policyholder who could be a *retail customer* about any changes to the information in the policy summary.

## **Chapter 6            Conduct of insurance business**

### **Part 6.1            Insurance business—general**

#### **6.1.1            Application—ch 6**

This chapter applies to all *authorised firms* conducting *insurance business* in or from the *QFC*.

#### **6.1.2            Application of ch 4 and ch 5—execution-only insurance transactions**

- (1) If an *authorised firm* effects a *life policy* in an *execution-only transaction*, the firm must comply with the provisions of chapter 4 (Conduct of investment business) that apply in relation to *execution-only transactions* relating to *life policies* conducted by *authorised firms* conducting *investment business*.
- (2) If an *authorised firm* effects a *non-investment contract of insurance* in an *execution-only transaction*, the firm must comply with the provisions of chapter 5 (Conduct of non-investment insurance mediation business) that apply in relation to *execution-only transactions* relating to *non-investment contracts of insurance* conducted by *authorised firms* conducting *insurance mediation business*.

## **Part 6.2                      Cancelling insurance contracts— retail customers**

### **Division 6.2.A              Cancelling life policies**

#### **6.2.1              New life policies—right to cancel**

A *retail customer* has a right to cancel, in accordance with this division, a new *life policy* effected by an *authorised firm* that is an *insurer*.

##### **Guidance for r 6.2.1**

An *authorised firm* may voluntarily provide additional cancellation rights, or rights exercisable during a longer period than allowed under this division, but, if it does so, these should be on terms similar to those in this division.

#### **6.2.2              Variations of life policies—right to cancel**

- (1) A *retail customer* has a right to cancel, in accordance with this division, an existing *life policy* effected by an *authorised firm* that is an *insurer* if the policy is varied and the variation has the effect of—
  - (a) increasing regular premiums or payments, or a single premium or payment, by more than 25% on the original premium or payment (or the previous highest agreed premium or payment); or
  - (b) introducing fresh policy terms; or
  - (c) imposing on the customer additional or increased obligations under the policy; or
  - (d) reducing, or otherwise materially altering, the customer's benefits under the policy.
- (2) This rule does not apply to the variation of a *life policy* if—
  - (a) the variation is the result of a pre-selected option; or
  - (b) the variation arises out of the settlement of a claim for damages or compensation connected with a previous contract.

### 6.2.3 Life policies—when cancellation right can be exercised

- (1) A *retail customer* may exercise a cancellation right under this division in relation to a *life policy* effected by an *authorised firm* with the customer only during the cancellation period for the investment.
- (2) For a new *life policy*, the cancellation period—
  - (a) starts on the later of the following:
    - (i) if the *authorised firm* gives advice to the *retail customer* in relation to the *life policy*—the day the firm gives the customer the statement required by rule 4.3.1 (c) (Retail investment advice—general requirements) for the policy;
    - (ii) the day the *authorised firm* gives the *retail customer* a *product disclosure document* or disclosure documentation required by any of the following rules:
      - rule 4.2.4 (3) (Initial contact by telephone)
      - rule 4.3.11 (Product disclosure document—provision requirement);
    - (iii) if the *authorised firm* is required to give the *retail customer* a confirmation note by rule 4.4.1 (Confirmation notes—provision requirement) in relation to the policy—the day the firm gives the confirmation note to the customer;
    - (iv) the day the authorised firm gives the retail customer a policy document containing all the terms of the policy under rule 4.3.19 (Life policies—provision of policy document); and
  - (b) ends at the end of 30 days after that day.
- (3) For an existing *life policy* that is varied, the cancellation period—
  - (a) starts on the later of the following:
    - (i) the day the *authorised firm* tells the *retail customer* that the variation has taken effect;

- (ii) the day the *authorised firm* gives the *retail customer* a written copy of the variation;
  - (iii) the day the *authorised firm* gives the *retail customer* the *product disclosure document* or disclosure documentation required by rule 4.3.11 (Product disclosure document—provision requirement) for the variation; and
- (b) ends at the end of the 30 days after that day.

#### **6.2.4 Life policies—exercising cancellation right**

- (1) This rule applies if a *retail customer* has a right under this division to cancel a *life policy* effected by an *authorised firm* with the customer.
- (2) The *retail customer* may exercise the cancellation right by giving notice of the exercise of the right to the *authorised firm* in a durable medium.
- (3) Without limiting subrule (2), if the *retail customer* exercises the right in accordance with information given to the customer by the *authorised firm*, the customer is taken to have complied with the subrule.
- (4) The notice need not use any particular form of words and it is sufficient if the intention to exercise the right is reasonably clear from the notice or the notice and the surrounding circumstances.
- (5) The notice need not give reasons for the exercise of the right.
- (6) If the *retail customer* exercises the cancellation right by sending notice to the *authorised firm* at the address given to the customer by the firm for the exercise of the right and the notice is in a durable form accessible to the firm, the notice is taken to have been given to the firm when it is sent to the firm at that address.

**6.2.5 Life policies—consequences of cancellation**

- (1) This rule applies if a *retail customer* exercises a right under this division to cancel a *life policy* effected by an *authorised firm* with the customer.
- (2) The *life policy* is terminated.
- (3) For a new *life policy*, the *authorised firm* must pay the *retail customer* an amount equal to the total of the amounts paid by the customer in relation to the *life policy*.
- (4) The amount must be paid to the *retail customer* without delay and no later than 30 days after the day the cancellation right is exercised.
- (5) For a new *life policy*, the *retail customer* must, if required by the *authorised firm*, pay the firm an amount of no more than the total of—
  - (a) amounts received, and the value of property or services received, by the customer in relation to the *life policy*; and
  - (b) losses incurred by the firm because of market movements in relation to relevant contracts if the losses are incurred on or before the day the cancellation right is exercised.
- (6) Subrule (5) only applies if the *authorised firm* can demonstrate that the *retail customer* was under rule 4.3.11 (Product disclosure document—provision requirement), given details of the amount that the customer may be required to pay if the customer cancelled the contract.
- (7) However, subrule (5) (b) does not apply in relation to a contract established on a regular or recurring premium or payment basis.
- (8) An amount payable by the *retail customer* under subrule (5) must be paid to the *authorised firm* without delay and no later than 21 days after the day the customer receives written notice from the firm requiring payment of the amount.
- (9) For an existing *life policy*, the *authorised firm* must pay the *retail customer* an amount equal to the cash surrender value (if any) of the policy.

- (10) The amount must be paid to the *retail customer* without delay and no later than 30 days after the day the cancellation right is exercised.
- (11) Any amounts payable under this rule are simple contract debts and, for a new *life policy*, the amounts payable may be set off against each other.

## **Division 6.2.B      Cancelling non-investment insurance contracts**

### **6.2.6      Non-investment insurance contracts—right to cancel**

- (1) A *retail customer* has a right, in accordance with this division, to cancel a *non-investment insurance contract* effected by an *authorised firm* that is an *insurer*.
- (2) This rule does not apply to the following contracts:
  - (a) a *non-investment insurance contract* that provides cover for less than 1 *month*;
  - (b) a *non-investment insurance contract* that has been fully performed by both parties at the *retail customer's* express request before the customer purports to exercise the right to cancel;
  - (c) a *non-investment insurance contract* that is a *pure protection contract* with a term of 6 *months* or less.
- (3) To remove any doubt, a *retail customer* has a right to cancel a *non-investment insurance contract* when the contract is initially entered into and on each renewal of the contract.

#### **Guidance for r 6.2.6**

- 1 An *authorised firm* may voluntarily provide additional cancellation rights, or rights exercisable during a longer period than allowed under this division, but, if it does so, these should be on terms similar to those in this division.
- 2 For rule 6.2.6 (2) (b)—
  - (a) a contract is not fully completed only because an event has happened that allows a claim to be made under the contract; and
  - (b) a contract is fully completed if a claim has been made that leads to the contract being terminated.

- 3 Cancellation under this part applies only during the initial period of cover. It does not refer to mid-term cancellation that an *authorised firm* may choose to offer its *customers*.
- 4 The cancellation rights described in this part apply to all renewals and not just those where there have been significant changes.
- 5 If rule 6.2.6 (2) applies and there is no cancellation right, the *authorised firm* should draw the *retail customer's* attention to this under rule 5.4.1 (2) (b).

### **6.2.7 Non-investment insurance contracts—when cancellation right can be exercised**

- (1) A *retail customer* may exercise a cancellation right under this division in relation to a *non-investment insurance contract* only during the cancellation period for the contract.
- (2) For a *non-investment insurance contract* that is a *pure protection contract*, the cancellation period—
  - (a) starts on the day the *authorised firm* gives the *retail customer* the policy document and information required by rule 5.4.1 (3) (Non-investment insurance product disclosure—requirement) in a durable medium; and
  - (b) ends at the end of 30 days after that day.
- (3) For a *non-investment insurance contract* that is a *general insurance contract*, the cancellation period—
  - (a) starts on the day the *authorised firm* gives the *retail customer* the policy document and information required by rule 5.4.1 (3) in a durable medium; and
  - (b) ends at the end of 14 days after that day.
- (4) If a *non-investment insurance contract* is a mixed contract, that is, it has elements of both a *pure protection contract* and a *general insurance contract*, subrule (2) applies to the contract and subrule (3) does not apply to the contract.



**6.2.8 Non-investment insurance contracts—exercising cancellation right**

- (1) This rule applies if a *retail customer* has a right under this division to cancel a *non-investment insurance contract* effected by an *authorised firm*.
- (2) The *retail customer* may exercise the cancellation right by giving notice of the exercise of the right to—
  - (a) the *authorised firm*; or
  - (b) an *approved representative* of the firm; or
  - (c) any agent of the firm with authority to accept notice for the firm.
- (3) Without limiting subrule (2), if the *retail customer* exercises the right in accordance with information given to the customer in accordance with rule 5.4.1 (3) (c) (Non-investment insurance product disclosure—requirement), the customer is taken to have complied with the subrule.
- (4) The notice may be given orally.
- (5) The notice need not use any particular form of words and it is sufficient if the intention to exercise the right is reasonably clear from the notice or the notice and the surrounding circumstances.
- (6) The notice need not give reasons for the exercise of the right.
- (7) If the *retail customer* exercises the cancellation right by sending notice to the *authorised firm* at the address given to the customer by the firm for the exercise of the right and the notice is in a durable form accessible to the firm, the notice is taken to have been given to the firm when it is sent to the firm at that address.

**6.2.9 Non-investment insurance contracts—consequences of cancellation**

- (1) This rule applies if a *retail customer* exercises a right under this division to cancel a *non-investment insurance contract* effected by an *authorised firm*.

- (2) The insurance contract is terminated.
- (3) The *authorised firm* must pay to the *retail customer* an amount equal to the total of the amounts paid by the customer for the insurance contract.
- (4) The amount must be paid to the *retail customer* without delay and not later than 21 days after the day the cancellation right is exercised.
- (5) If the insurance contract is a *general insurance contract*, the *retail customer* must, if required by the *authorised firm*, pay the firm an amount of no more than the total of—
  - (a) the value of the services the firm actually provided to the customer in relation to the insurance contract; and
  - (b) amounts received, and the value of property or services received, by the customer in relation to the insurance contract.
- (6) However, the *authorised firm* may only require the *retail customer* to pay an amount under subrule (5) if—
  - (a) the performance of the insurance contract started before the end of the cancellation period at the customer's request; and
  - (b) the firm can demonstrate that the customer was, under rule 5.4.1 (Non-investment insurance product disclosure—requirement), given details of the amount that the customer may be required to pay if the customer cancelled the contract.
- (7) The *authorised firm* must not require the *retail customer* to pay an amount under subrule (5) that could be taken to be a penalty or that exceeds an amount calculated as follows:
$$AC + CC$$
- (8) In subrule (7):

*AC* means the total of the costs (other than costs for the cover provided under the insurance policy) actually incurred by the firm in relation to the insurance policy.

*CC* means the cost to the firm of the cover actually provided to the customer under the insurance policy.

**Guidance for r 6.2.9 (7) and (8)**

- 1 The amount calculated under rule 6.2.9 (7) may include—
  - (a) an amount for the cover provided; and
  - (b) a proportion of the *commission* paid to another *authorised firm* sufficient to cover that firm's costs; and
  - (c) a proportion of any fees charged by the *authorised firm* that, when totalled with any commission to be repaid, would be sufficient to cover the firm's costs.
- 2 The *Regulatory Authority* would expect the proportion of the insurance contract's exposure that relates to the time on risk to be a proportional apportionment. But, if there is material unevenness in the incidence of risk, the *insurer* could employ a more accurate method, which may result in a lower or higher charge to the *retail customer*.

- (9) An amount that the *authorised firm* requires the *retail customer* to pay under subrule (5) must not take into account or include an amount received, or the value of any property or services received, by the customer in relation to a claim under the insurance policy.
- (10) An amount payable by the *retail customer* under subrule (5) must be paid to the *authorised firm* without delay and no later than 30 days after the day the customer receives written notice from the firm requiring payment of the amount.
- (11) Any amounts payable under this rule are simple contract debts and may be set off against each other.

## **Division 6.2.C      Cancelling insurance contracts— recordkeeping**

### **6.2.10      Insurance contract cancellation—recordkeeping**

- (1) An *authorised firm* must make appropriate records about the exercise of a right to cancel under division 6.2.A (Cancelling life policies) or division 6.2.B (Cancelling non-investment insurance contracts).

- (2) The records must be kept for at least 6 years after the day the right is exercised.

## Part 6.3 Claims handling

### 6.3.1 Claims handling—general requirements

- (1) If an *authorised firm* handles insurance claims, it must handle claims fairly and promptly and keep the *client* informed of progress.
- (2) If an *authorised firm* effects an insurance contract with or for a *client*, it must give the *client* reasonable guidance in pursuing a claim under the policy.
- (3) If an *authorised firm* cannot deal with any part of a claim under an insurance contract it effected with or for a *client*, it must tell the *client* in writing.
- (4) An *authorised firm* that is an *insurer* must not—
  - (a) unreasonably reject a claim made by a *client*; nor
  - (b) except if there is evidence of fraud, refuse to meet a claim made by a *retail customer* on any of the following grounds:
    - (i) non-disclosure of a fact material to the risk that the customer could not reasonably be expected to have disclosed;
    - (ii) misrepresentation of a fact material to the risk, unless the misrepresentation is negligent or wilful;
    - (iii) for a *general insurance contract*—breach of warranty or condition, unless the circumstances of the claim are connected with the breach;
    - (iv) for a *non-investment insurance contract* that is a *pure protection contract*—breach of warranty, unless the circumstances of the claim are connected with the breach and—
      - (A) for a life of another contract—the warranty relates to a statement of fact about the life to be assured and that statement would have been grounds for rejection of a claim by the firm under paragraph (b)

- (i) or (ii) if it had been made by the life to be assured under an own life contract; or
  - (B) the warranty is material to the risk and was drawn to the attention of the customer before the conclusion of the contract.
- (5) To remove any doubt, and subject to any other law in force in the *QFC*, English law applies to the interpretation and application of subrule (4).

### **6.3.2 Claims handling—claims by retail customers**

- (1) An *authorised firm* that is an *insurer* must respond promptly to a notification of a claim by a *retail customer*.

#### **Guidance for r 6.3.2 (1)**

Notification of a claim is a demand of the *authorised firm* to pay or provide a benefit insured under the policy. An inquiry that precedes such a demand, for example, about whether a particular loss is covered, and therefore whether a claim could be made under the terms of the policy, is not notification of a claim.

- (2) If the claim relates to a risk that is clearly outside the scope of the policy, the *authorised firm's* response to the *retail customer* must tell the customer this.
- (3) If the claim does not relate to a risk that is clearly outside the scope of the policy, the *authorised firm's* response to the *retail customer* must—
  - (a) tell the customer about the action that will be taken by the firm in response to the claim, and when the action will be taken; and
  - (b) if the firm has appointed, or is to appoint, another *person* to contact the customer for the firm—include the following information, if known, for each *person* appointed or to be appointed:
    - (i) the *person's* name (unless the *person* trades under the firm's name);
    - (ii) the *person's* function;

- (iii) the work the *person* is to carry out in relation to the claim.
- (4) However, the *authorised firm* need not include the information mentioned in subrule (3) (b) in the response if—
  - (a) the purpose of the appointment is to investigate the validity of the claim; and
  - (b) including the information would limit or prevent the effective investigation of the claim or any part of it.
- (5) The *authorised firm's* response must—
  - (a) be in a durable medium, unless the notification by the *retail customer* was made orally and the firm does not require the customer to complete a claim form; and
  - (b) provide the customer with a claim form, if the firm requires a claim form to be completed.
- (6) The *authorised firm* must keep the *retail customer* reasonably informed about the progress of the claim.

**Guidance for r 6.3.2 (6)**

- 1 If the investigation of a claim is likely to be protracted, the *authorised firm* should give periodic progress or status reports, when appropriate, to the *retail customer*, including giving the customer any relevant update about the information given under rule 6.3.2 (3) (b).
  - 2 The *authorised firm* should also respond without excessive delay to any reasonable request by the *retail customer* for information.
- (7) The *authorised firm* must tell the *retail customer* as soon as practicable whether it—
    - (a) rejects all of the customer's claim; or
    - (b) rejects the customer's claim but, without prejudice to the rejection, makes an offer in compromise; or
    - (c) accepts all or part of the customer's claim.

- (8) If the *authorised firm* rejects the claim, but without prejudice to the rejection makes an offer in compromise, it must tell the *retail customer* the terms of the offer as soon as practicable.
- (9) If the *authorised firm* accepts all or part of the *retail customer's* claim, it must tell the customer as soon as practicable whether—
  - (a) for the parts it accepts—it agrees to provide the amount, property or service claimed by the customer in full; or
  - (b) it makes some other offer in compromise and, if so, the terms of its offer.
- (10) Unless the *authorised firm* accepts the *retail customer's* claim in full, the firm must—
  - (a) explain why it rejects all or part of the customer's claim or makes a compromise offer, specifying any relevant term of the policy; and
  - (b) offer the customer the choice of receiving the information mentioned in paragraph (a) in a durable medium.
- (11) The *authorised firm* must, in relation to each part of the claim that it accepts, tell the *retail customer* whether the claim will be settled by paying the customer, by paying another *person* to provide goods or services, or by providing goods or services.
- (12) If a claim, or a part of a claim, by a *retail customer* is to be settled, the *authorised firm* must settle the claim by the customer promptly.

**Guidance for r 6.3.2 (12)**

Settlement terms are agreed when the *authorised firm* accepts the *retail customer's* claim and the customer accepts the firm's offer of settlement.

**6.3.3 Claims handling—long term care insurance contracts**

- (1) If an *authorised firm* that is an *insurer* receives a claim under a *long term care insurance contract*, it must respond promptly by providing the policyholder, or the *person* acting for the policyholder, with—
  - (a) a claim form, if it requires a claim form to be completed; and



- (b) a summary of its claims-handling procedures; and
  - (c) appropriate information about the medical criteria that must be met and any waiting period that applies under the terms of the policy.
- (2) As soon as practicable after receiving the claim, the *authorised firm* must tell the policyholder, or the *person* acting for the policyholder—
- (a) for each part of the claim it accepts—whether the claim will be settled by paying the policyholder, paying another *person* to provide goods or services, or providing goods and services; and
  - (b) for each part of the claim it rejects—why the claim has been rejected and whether any future rights to claim exist.

#### **6.3.4 Claims handling—recordkeeping**

- (1) An *authorised firm* that is an *insurer* must make a record of the following information in relation to each claim made against a policy issued by it or handled by it:
- (a) details of the claim;
  - (b) the date the claim was settled or rejected;
  - (c) details of settlement or rejection, including information relevant to the basis for the settlement or rejection.
- (2) The *authorised firm* must keep the record for at least 3 years after the day the claim is settled or rejected.



## **Part 7.2 Terms of business for deposit taking—all customers**

### **7.2.1 Terms of business for deposit taking business—general requirements**

- (1) Before an *authorised firm* conducts *deposit taking business* with or for a *customer*, it must give the *customer* its *terms of business* for the *customer*.
- (2) This rule does not apply if the *deposit taking business* is carried on after the termination of the *terms of business* and the *authorised firm* is acting only for the purposes of fulfilling any obligations still outstanding under the *terms of business*.

### **7.2.2 Terms of business for deposit taking—contract**

- (1) An *authorised firm* must ensure that its *terms of business* for a *customer* for *deposit taking business* contain, in adequate detail, the basis on which it will conduct *deposit taking business* with or for the *customer*.
- (2) Without limiting subrule (1), the *authorised firm* must ensure that the *terms of business* contain the information required by schedule 6 (Minimum content of terms of business—deposit taking business).
- (3) However, the *authorised firm* is not required to include information in the *terms of business* if the information is, by its nature, unavailable when the *terms of business* are given to the *customer*.
- (4) If information mentioned in subrule (3) becomes available after the *terms of business* are given to the *customer*, the *authorised firm* must give the information to the *customer* as soon as practicable after it becomes available to the firm.

### **7.2.3 Terms of business for deposit taking—multiple documents**

An *authorised firm's terms of business* for a *customer* for *deposit taking business* may consist of 1 or more documents if it is made

clear to the *customer* that collectively they make up the *terms of business*.

#### **7.2.4 Terms of business for deposit taking—amendment**

If the *terms of business* of an *authorised firm* for a *customer* for *deposit taking business* allow the firm to amend the *terms of business* without the *customer's* agreement, the firm must not conduct business with or for the *customer* on the basis of an amendment of the *terms of business* unless the firm has given the *customer* written notice of the amendment—

- (a) at least 10 *business days* before the amendment is to take effect; or
- (b) if it is impractical to give that notice—as early as is practicable.

#### **7.2.5 Terms of business for deposit taking—recordkeeping**

An *authorised firm* must keep a copy of a *terms of business* that it gives a *customer* under this part, and of each amendment of the *terms of business*, for at least 6 years after the day the firm ceases to conduct business with or for the *customer* under the *terms of business*.

## Chapter 8            Customer dispute resolution scheme

### 8.1.1        Establishment of scheme

An independent body called the Interim Customer Dispute Resolution Scheme (the *customer dispute resolution scheme*) is established.

### 8.1.2        Functions of scheme

The functions of the *customer dispute resolution scheme* are—

- (a) to hear complaints made against *authorised firms* by their *clients* or *customers*; and
- (b) to require *authorised firms* to pay compensation to *clients* or *customers* whose complaints are upheld.

### 8.1.3        Procedures of scheme

- (1) The *Regulatory Authority* may publish, on the authority's web site, procedures for—
  - (a) referring a complaint to the *customer dispute resolution scheme*; and
  - (b) hearing a complaint referred to the scheme.
- (2) If no procedure is provided under subrule (1) for anything to be done in relation to the matters mentioned in subrule (1) (a) and (b), the *customer dispute resolution scheme* may decide the procedure to be followed.
- (3) However, procedures decided under subrule (2) must be simple, quick and fair.

### 8.1.4        Natural justice

The *customer dispute resolution scheme* must observe natural justice.

**8.1.5 Members of scheme**

- (1) The *customer dispute resolution scheme* consists of the members, from time to time, appointed by the *Regulatory Authority*.
- (2) The terms of a member's appointment (including terms about ending the appointment) are those agreed between the member and the *Regulatory Authority*.

## **Schedule 1      Minimum content of terms of business—investment business**

(see r 4.2.6)

### **Part S1.1      Minimum information required for all investment business**

#### **S1.1      Commencement**

When and how the *terms of business* are to come into force.

#### **S1.2      Regulatory status**

The *authorised firm's* regulatory status in a form required by *GENE*.

*Note*      See *GENE*, r 3.1.

#### **S1.3      Services**

The services the *authorised firm* will provide.

#### **S1.4      Fees and other payment**

The *authorised firm's* payment terms, including, if appropriate—

- (a) how fees are calculated; and
- (b) how fees are to be paid and collected; and
- (c) how frequently fees are to be paid; and
- (d) whether any other payment is receivable by the firm (or to its knowledge by any of its *associates*) instead of fees in relation to any *transaction executed* by the firm with or for the *customer*.

#### **S1.5      Conflicts of interest etc**

How conflicts of interest and *material interests* will be dealt with by the *authorised firm*.

**S1.6 Soft dollar agreements etc**

The existence of any *soft dollar agreements* or *bundled brokerage arrangements* and the *authorised firm's* or, if relevant, its *group's* policy relating to either type of arrangement.

**S1.7 Complaints**

Information about—

- (a) the *authorised firm's* internal complaint-handling procedures, including information about how a complaint may be made to the firm; and
- (b) the availability of the *customer dispute resolution scheme*.

**S1.8 Best execution**

If the duty to provide best *execution* under rule 4.5.7 (Dealing and managing—best execution) need not be, and is not to be, provided by the *authorised firm* for the *customer*, a statement that—

- (a) the firm need not provide best *execution* for the *customer*; or
- (b) the circumstances in which the firm will not provide best *execution*.

**S1.9 Investment objectives**

The *customer's* investment objectives.

**S1.10 Restrictions**

Whether there are any investment restrictions and, if so, the investment restrictions, including, for example, any restrictions relating to the types of *relevant investments* to be invested in and the types of markets in which *transactions* may be made.

**S1.11 Instructions**

The arrangements for the *customer* giving instructions to the *authorised firm* and for the firm acknowledging them.



**S1.12 Accounting**

The arrangements for accounting to the *customer* for any *transaction executed* with or for the *customer*.

**S1.13 Acting as principal**

Whether the *authorised firm* may act as principal in a *transaction* with the *customer*.

**S1.14 Stock lending**

If the *customer* is a *retail customer*, whether or not the *authorised firm* may undertake *stock lending* with or for the customer and, if so—

- (a) the assets to be lent; and
- (b) the type and value of relevant collateral from the customer; and
- (c) the method and amount of payment owing to the customer in the lending.

**S1.15 Termination and cancellation**

- (1) The termination method and the consequences of termination.
- (2) Whether there is a right to cancel and, if there is a right to cancel, the consequences of exercising this right, and enough details to enable the right to be exercised by a *retail customer*.

## **Part S1.2                    Minimum information required for investment management**

### **S1.16      Portfolio composition and initial value**

The initial composition and value of the portfolio to be managed and the on-going composition of the portfolio.

### **S1.17      Discretion**

The extent of the *authorised firm's* discretion and whether there are any restrictions or limits.

### **S1.18      Valuation**

The basis on which the assets being managed are to be valued.

### **S1.19      Underwriting**

Whether the *authorised firm* may commit the *customer* to any obligation to *underwrite* or *sub-underwrite* any issue or offer of *securities* and, if so, any restrictions or limits of the extent of the underwriting.

### **S1.20      Borrowing**

Whether the *authorised firm* may borrow on the *customer's* behalf and, if so, the circumstances in which it may borrow, the limits on borrowing and the circumstances (if any) in which the limits can be exceeded.

## Schedule 2      Content of confirmation notes

(see r 4.4.4)

### S2.1      Confirmation notes—general content requirements

Every confirmation note for a *transaction* by an *authorised firm* for a *customer* must include the following information:

- (a) the firm's name and address;
- (b) the firm's regulatory status in a form required by *GENE*;  
*Note*      See *GENE*, r 3.1.
- (c) if the firm *executed* the *transaction* as principal or agent—that fact;
- (d) the *customer's* name or other designation and account number;
- (e) a description of the *relevant investment*, including the amount invested;
- (f) whether the *transaction* is a sale or purchase;
- (g) the price or unit price at which the *transaction* was *executed*;
- (h) if the *transaction* involves a conversion of currency—the rate of exchange obtained;
- (i) the date of the *transaction*;
- (j) either—
  - (i) the time of the *transaction*; or
  - (ii) a statement that information about the time of the *transaction* will be provided on request;
- (k) the total amount payable and the date it is payable;
- (l) the *remuneration* of the firm and any *associate* (unless the *associate* is not obliged to disclose it to the firm because, for example, the firm is its *customer*) in relation to the *transaction*;

- (m) the amount of any *commission*, any *mark-up or mark-down*, fees, taxes or duties, unless included in remuneration mentioned in paragraph (k);
- (n) if the *transaction* involved, or will involve, the purchase of a currency with another currency—the rate of exchange involved or a statement that the rate will be supplied when the currency has been purchased, including if applicable the maturity or expiry date of any currency hedge;
- (o) whether there is a right to cancel and, if there is a right to cancel, the consequences of exercising this right, and enough details to enable the right to be exercised by a *retail customer*.

**S2.2 Confirmation notes—additional information for derivatives**

A confirmation note relating to a *transaction* in *derivatives* must also include the following information:

- (a) the maturity, delivery or expiry date of the *derivative*;
- (b) for an *option*—the last exercise date, whether it can be exercised before maturity and the strike price;
- (c) whether the exercise creates a sale or purchase in the underlying asset;
- (d) if the transaction closes out an open *futures* position—all essential details required in relation to each contract included in the open position and each contract by which it was closed out and the profit or loss to the *customer* arising out of closing out that position;
- (e) on the exercise of an *option*—
  - (i) the date of exercise, and either the time of exercise or that the *customer* will be notified of the time on request; and
  - (ii) the strike price of the *option* (for a currency option, the rate of exchange will be the same as the strike price) and, if applicable, the total consideration from or to the *customer*.

**S2.3 Confirmation notes—additional information for collective investment funds**

A confirmation note relating to a *transaction* in *units* in a *collective investment fund* for a *customer* must also include the following information:

- (a) if the *authorised firm* is not the *operator* and the *transaction* was *executed* with the *customer* by the firm as principal—that fact;
- (b) the name of the fund and the type and number of units involved;
- (c) the amount of—
  - (i) the *operator's* initial *charges* (if any) in cash or percentage terms; and
  - (ii) any *charges* (other than *charges* mentioned in subparagraph (i)) made by the firm to the *customer* in relation to the *transaction* and, unless the *charges* to the *customer* are made on the same basis, the basis on which the amount of the *charges* was decided;
- (d) whether the price at which the *transaction* has been *executed* is on a *historic price* or forward price basis.

## **Schedule 3      Content of periodic statements**

(see r 4.4.7)

### **Part S3.1              Periodic statements—general content requirements**

#### **S3.1      Contents and value**

The following information as at the end of the period covered by the periodic statement:

- (a) the number, description and value of each *relevant investment* held;
- (b) the amount of cash held;
- (c) the total value of the *customer's* portfolio.

#### **S3.2      Basis of valuation**

- (1) A statement of the basis on which the value of each *relevant investment* has been calculated and, if applicable, a statement that the basis for valuing a particular *relevant investment* has changed since the last periodic statement.
- (2) If a *relevant investment* is shown in a currency other than the usual currency used for valuation of the *customer's* portfolio, the relevant exchange rates must also be shown.

#### **S3.3      Confirmations**

If the *authorised firm* relies on rule 4.4.5 (1) (a) or (c) (Confirmation notes—provision requirement exemption) during the period covered by the periodic statement, the information required to be included in the periodic statement by rule 4.4.5 (2).

## **Part S3.2                      Periodic statements—investment management**

### **S3.4            Loans**

A statement of—

- (a) the *relevant investments* (if any) that were, at the closing date of the periodic statement, loaned to a third party; and
- (b) the *relevant investments* (if any) that were, at that date, charged to secure borrowings made for the portfolio.

### **S3.5            Loans and borrowing**

The total of any interest payments made, and income received, during the period covered by the periodic statement in relation to loans or borrowings made during the period.

### **S3.6            Transaction particulars**

Particulars of each *transaction* entered into for the portfolio during the period covered by the periodic statement.

### **S3.7            Transfers**

The total amount, and particulars of all *relevant investments*, transferred into and out of the portfolio during the period covered by the periodic statement.

### **S3.8            Interest**

The total of any interest payments (together with the dates of their application), dividends and other benefits received by the *authorised firm* for the portfolio during the period covered by the periodic statement.

### **S3.9            Charges**

If not previously advised in writing, a statement of the total charges of the *authorised firm* and its *associates* during the period covered by the periodic statement, expressed as an amount rather than as a percentage.

**S3.10 Remuneration**

A statement of the amount (or, if provision of this information is not practicable, the basis) of any remuneration received during the period covered by the periodic statement by the *authorised firm* and its *associates* from third parties in relation to the *transactions* entered into, or any other services provided, for the portfolio.

**Part S3.3 Periodic statements—contingent liability transactions**

**S3.11 Changes in value**

The total amount of money transferred into and out of the portfolio during the period covered by the periodic statement.

**S3.12 Open positions**

In relation to each open position in the *customer's* account at the end of the period covered by the periodic statement, either of the following:

- (a) the unrealised profit or loss to the *customer* before deducting or adding any *commission* payable on closing out;
- (b) the net profit or loss in relation to the *customer's* overall position in each contract.

**S3.13 Closed positions**

In relation to each *transaction executed* during the period covered by the periodic statement to close out *customer's* position, either of the following:

- (a) the resulting profit or loss to the *customer* after deducting or adding any *commission*;
- (b) the net profit or loss in relation to the *customer's* overall position in each contract.



**S3.14 Total holdings**

The total of each of the following in, or relating to, the *customer's* portfolio at the close of business on the valuation date included in the period covered by the periodic statement:

- (a) cash;
- (b) collateral value;
- (c) management fees;
- (d) *commission* attributable to *transactions* during the period covered by the periodic statement or a statement that the information has been separately disclosed in writing in earlier statements or confirmations to the *customer*.

**S3.15 Option account valuations**

In relation to each *option* contained in the account on the valuation date included in the period covered by the periodic statement, the following information:

- (a) the *share, future, index* or other *relevant investment* involved;
- (b) the trade price and date for the opening *transaction*, unless the valuation statement follows the statement for the period in which the *option* was opened;
- (c) the market price for the contract;
- (d) the exercise price for the contract.

**Part S3.4 Periodic statements—structured capital at risk investments**

**S3.16 Snapshot maturity value**

A statement of the maturity value of each *structured capital at risk investment*, on the assumption that the relevant index, indices, basket of selected investments or other factor remains at the level they were on the close date of the period covered by the periodic statement.

**S3.17 Changes in maturity value**

A statement of the levels of the relevant index, indices, basket of selected investments or other factor, at which the maturity value of each *structured capital at risk investment* would be less than the amount of the initial capital invested, and an indication of by how much less the maturity value would be.

**S3.18 Risk warning**

A risk warning that the value of the relevant index, indices, basket of selected investments, or other factor, can go up or down.

## **Schedule 4      Additional obligations for investment research recommendations**

(see r 4.5.3)

### **S4.1      Investment research recommendations—additional requirements**

- (1) An *authorised firm* must take reasonable care to ensure that a *research recommendation* produced by it—
  - (a) indicates all substantially material sources (including, if appropriate, the *issuer*) and whether the *research recommendation* has been disclosed to the *issuer* and amended after this disclosure; and
  - (b) adequately summarises any basis of valuation or methodology used—
    - (i) to evaluate a *security*, a *derivative* or *issuer of securities*; or
    - (ii) to set a price target for a *security* or *derivative*; and
  - (c) adequately explains the meaning of—
    - (i) any recommendation made (for example, ‘buy’ ‘sell’ or ‘hold’) and the time horizon applying to the recommendation; and
    - (ii) any risk warnings, including any sensitivity analysis of relevant assumptions; and
  - (d) refers to—
    - (i) the planned frequency (if any) of updates of the *research recommendation*; and
    - (ii) any major changes in the coverage policy previously announced; and

- (e) indicates clearly and prominently—
  - (i) the date the *research recommendation* was first released for distribution; and
  - (ii) the date and time of any *security* or *derivative* price mentioned.
- (2) If the substance of the *research recommendation* (the **later recommendation**) differs from the substance of an earlier *research recommendation* that was about the same *security, derivative* or *issuer* and was issued during the 12-month period before the day of dissemination of the later recommendation, the later recommendation must clearly and prominently indicate the difference and the date of the earlier *research recommendation*.
- (3) If the requirements of subrule (1) (a), (b) or (c) would be disproportionate in relation to the length of the *research recommendation*, the *authorised firm* may, instead of complying with the requirements, make clear and prominent reference in the *research recommendation* to the place where the required information can be directly and easily accessed by the public (for example, by a hyperlink to the information on an appropriate internet site of the firm) if there has been no change in the methodology or basis of valuation used.
- (4) The requirements of subrule (1) (a) do not apply in relation to a non-written *research recommendation* to the extent that they would be disproportionate in relation to the length of the *research recommendation*.

#### **S4.2 Investment research recommendation—general standards for disclosure of interests etc**

- (1) An *authorised firm* must disclose, in a *research recommendation* produced by it—
  - (a) all of its relationships and circumstances that may reasonably be expected to impair the objectivity of the *research recommendation*, in particular any significant financial interest in a *relevant investment* that is the subject of the *research*

*recommendation*, or a significant conflict of interest in relation to an *issuer* of relevant *securities*; and

- (b) relationships and circumstances, of the kind mentioned in paragraph (a), of each *person* working for the firm who was involved in preparing the substance of the *research recommendation*, including whether the *person's* remuneration is tied to investment banking transactions performed by the firm or any affiliated company.
- (2) If the *authorised firm* is a legal person, the information disclosed must include the following:
- (a) any interests or conflicts of interest of the firm or any *related* entity that are accessible, or reasonably expected to be accessible, to the *persons* involved in the preparation of the substance of the *research recommendation*;
  - (b) any interests or conflicts of interest of the firm or any *related* entity known to *persons* who, although not involved in the preparation of the substance of the *research recommendation*, had or could reasonably be expected to have access to the substance of the *research recommendation* before its dissemination, other than *persons* whose only access to the *research recommendation* was to ensure compliance with relevant regulatory or statutory obligations, including the disclosures required under this schedule.
- (3) If the disclosures required by subrules (1) and (2) would be disproportionate in relation to the length of the *research recommendation*, the *authorised firm* may, instead of complying with the requirements of the subrules, make clear and prominent reference in the *research recommendation* to the place where the required disclosures can be directly and easily accessed by the public (for example, by a hyperlink to the information on an appropriate internet site of the firm).
- (4) The requirements of subrules (1) and (2) do not apply in relation to a non-written *research recommendation* to the extent that they are

disproportionate in relation to the length of the *research recommendation*.

**S4.3 Investment research for recommendations—additional requirements for disclosure of interests**

- (1) This rule applies to a *research recommendation* produced by an *authorised firm* in relation to a *relevant investment*.
- (2) The *authorised firm* must clearly and prominently disclose in the *research recommendation* the following information on its interests and conflicts of interest:
  - (a) major shareholdings that exist between it or any *related person* and the issuer of the *relevant investment* (the **relevant issuer**) including at least—
    - (i) shareholdings exceeding 5% of the total issued share capital in the relevant issuer that are held by the firm or any *related person*; or
    - (ii) shareholdings exceeding 5% of the total issued share capital of the firm or any *related person* that are held by the relevant issuer;
  - (b) any other financial interests held by the firm or any *related person* in relation to the relevant issuer that are significant in relation to the *research recommendation*;
  - (c) if applicable, a statement that the firm or any *related person* is a market maker or liquidity provider in the *securities* of the relevant issuer or in any related *derivatives*;
  - (d) if applicable, a statement that the firm or any *related person* has been lead manager or co-lead manager over the previous 12 *months* of any publicly disclosed offer of *securities* of the relevant issuer or in any related *derivatives*;
  - (e) if applicable, a statement that the firm or any *related person* is party to any other agreement with the relevant issuer relating to the provision of investment banking services;

- (f) if applicable, a statement that the firm or any *related person* is party to an agreement with the relevant issuer relating to the production of the *research recommendation*.
- (3) Subrule (2) (e) does not apply in relation to an agreement if—
    - (a) disclosure of the statement would involve the disclosure of confidential information; and
    - (b) the agreement has been in force for at least 12 *months* or has given rise during that period to a payment or to the promise of payment.
  - (4) The *authorised firm* must disclose, in general terms, in the *research recommendation* the effective organisational and administrative arrangements set up within the firm to prevent and deal with conflicts of interest in relation to *research recommendations*, including information barriers.
  - (5) If a *person* working for the *authorised firm* who is involved in the preparation of the *research recommendation* receives or buys *shares* of the relevant issuer before a public offering of the *shares*, the price at which the *shares* were acquired and the date of acquisition must be disclosed in the *research recommendation*.
  - (6) The *authorised firm* must publish the following information on a quarterly basis, and must disclose it in its *research recommendation*:
    - (a) the proportion of all *research recommendations* published during the quarter that are ‘buy’, ‘hold’, ‘sell’ or equivalent terms;
    - (b) the proportion of *relevant investments* in each of these categories issued by *issuers* to which the firm supplied material investment banking services during the last 12 *months*.
  - (7) If the disclosures required by subrules (2) to (6) would be disproportionate in relation to the length of the *research recommendation*, the *authorised firm* may, instead of complying with the requirements of the subrules, make clear and prominent reference in the *research recommendation* to the place where the required information can be directly and easily accessed by the

public (for example, by a hyperlink to the information on an appropriate internet site of the firm).

- (8) The requirements of subrules (2) to (6) do not apply in relation to a non-written research recommendation to the extent that they are disproportionate in relation to the length of the *research recommendation*.

**S4.4 Investment research recommendations—identity of disseminators of recommendations**

If an *authorised firm* disseminates a *research recommendation* produced by a third party, the *authorised firm* must ensure that the *research recommendation* clearly and prominently identifies the firm.

**S4.5 Investment research recommendations—requirements for dissemination of third party recommendations**

- (1) If a *research recommendation* produced by a third party is substantially changed before dissemination by an *authorised firm*, the firm must ensure that—
  - (a) the disseminated material clearly describes the change in detail; and
  - (b) if the change consists of a change of the direction of the recommendation (for example, changing a ‘buy’ recommendation into a ‘hold’ or ‘sell’ recommendation), the requirements of S4.3 (Investment research recommendation—additional requirements for disclosure of interests) are complied with by the firm, to the extent of the substantial change, as if the firm were the producer of the *research recommendation*; and
  - (c) it has a formal written policy under which the *persons* receiving the *research recommendation* may be directed to where they can have access to the identity of the producer of the *research recommendation*, the *research recommendation* itself, and the disclosure of the producer’s interests or conflicts of interest, to the extent that they are publicly available.



- (2) Subrule (1) does not apply in relation to news reporting on *research recommendations* produced by a third party if the substance of the *research recommendation* is not changed.
- (3) If an *authorised firm* disseminates a summary of a *research recommendation* produced by a third party, it must ensure that the summary—
  - (a) is fair, clear and not misleading; and
  - (b) identifies the source *research recommendation*; and
  - (c) identifies where (to the extent that they are publicly available) the third party's disclosures relating to the source *research recommendation* can be directly and easily accessed by the public (for example, by a hyperlink to the information on an appropriate internet site of the firm).

## Schedule 5 Recordkeeping—dealing and managing

(see r 4.5.9)

### S5.1 Minimum records of customer orders

- (1) An *authorised firm* must record the information required by table S5.1 if an event mentioned in the table happens.

**Table S5.1 Minimum details for dealing and managing**

| event   | minimum details required   |   |  |   |  |   |   |   |  |   |  |   |   |
|---|--|---|--|---|--|---|---|---|--|---|--|---|---|
| 1 firm receives a <i>customer order</i> or decides to <i>execute</i> a <i>transaction</i> for a <i>customer order</i> in the exercise of its discretion | <table border="0"> <tr> <td data-bbox="730 891 751 920">1</td> <td data-bbox="831 891 1294 954">the <i>customer's</i> name or other means of identification and account number</td> </tr> <tr> <td data-bbox="730 987 751 1016">2</td> <td data-bbox="831 987 1334 1050">in relevant, the date and time the <i>customer order</i> is received by the firm</td> </tr> <tr> <td data-bbox="730 1084 751 1113">3</td> <td data-bbox="831 1084 1321 1218">if relevant, the date and time that the firm decides to <i>execute</i> a <i>transaction</i> for the <i>customer order</i> in the exercise of its discretion</td> </tr> <tr> <td data-bbox="730 1252 751 1281">4</td> <td data-bbox="831 1252 1337 1350">the identity of the <i>employee</i> who received the <i>customer order</i> or made the decision to <i>execute</i> the <i>transaction</i></td> </tr> <tr> <td data-bbox="730 1384 751 1413">5</td> <td data-bbox="831 1384 1310 1518">the <i>relevant investment</i>, and the number, or total value of, the <i>relevant investment</i> (including any price limit or trading instructions)</td> </tr> <tr> <td data-bbox="730 1552 751 1581">6</td> <td data-bbox="831 1552 1246 1615">whether the <i>customer order</i> is for a purchase or sale</td> </tr> </table> | 1 | the <i>customer's</i> name or other means of identification and account number | 2 | in relevant, the date and time the <i>customer order</i> is received by the firm | 3 | if relevant, the date and time that the firm decides to <i>execute</i> a <i>transaction</i> for the <i>customer order</i> in the exercise of its discretion | 4 | the identity of the <i>employee</i> who received the <i>customer order</i> or made the decision to <i>execute</i> the <i>transaction</i> | 5 | the <i>relevant investment</i> , and the number, or total value of, the <i>relevant investment</i> (including any price limit or trading instructions) | 6 | whether the <i>customer order</i> is for a purchase or sale |
| 1   | the <i>customer's</i> name or other means of identification and account number   |   |  |   |  |   |   |   |  |   |  |   |   |
| 2   | in relevant, the date and time the <i>customer order</i> is received by the firm   |   |  |   |  |   |   |   |  |   |  |   |   |
| 3   | if relevant, the date and time that the firm decides to <i>execute</i> a <i>transaction</i> for the <i>customer order</i> in the exercise of its discretion  |   |  |   |  |   |   |   |  |   |  |   |   |
| 4   | the identity of the <i>employee</i> who received the <i>customer order</i> or made the decision to <i>execute</i> the <i>transaction</i>   |   |  |   |  |   |   |   |  |   |  |   |   |
| 5   | the <i>relevant investment</i> , and the number, or total value of, the <i>relevant investment</i> (including any price limit or trading instructions)   |   |  |   |  |   |   |   |  |   |  |   |   |
| 6   | whether the <i>customer order</i> is for a purchase or sale  |   |  |   |  |   |   |   |  |   |  |   |   |

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|   |   |   |
|---|---|---|
|   | 7 | any other instruction received by the firm from the <i>customer</i> about the carrying out of the <i>customer order</i> (including any amendments of the <i>customer order</i> or cancellation of the <i>customer order</i> ) |
| 2 firm <i>executes</i> a <i>transaction</i> for a <i>customer order</i>                                   | 1 | the <i>customer's</i> name or other means of identification and account number  |
|   | 2 | the name of the <i>counterparty</i> , if known to the firm  |
|   | 3 | the date and time of the <i>transaction</i> , if available  |
|   | 4 | the identity of the <i>employee executing</i> the <i>transaction</i>  |
|   | 5 | the <i>relevant investment</i> , and the number, or total value of, the <i>relevant investment</i>  |
|   | 6 | the price and other significant terms (including exchange rate details, if relevant)  |
|   | 7 | whether the transaction was a purchase or sale  |
| 3 firm passes a <i>customer order</i> to another <i>person</i> for <i>execution</i> of <i>transaction</i> | 1 | the name of the <i>person</i> instructed  |
|   | 2 | the terms of the instructions   |
|   | 3 | the date and time the instruction was given.  |

- (2) However, if the *authorised firm* acts as an *investment manager* and its decision to effect a *transaction* of a *customer* is contemporaneous with the *execution* of the relevant *customer order* or its passing of the relevant *customer order* to another *person* for *execution*, the firm does not need to create a separate record relating to the time of the decision to deal, and the time of execution of the *customer order* or passing the *customer order* to the other *person*, if the *transaction* record contains a note or other indication that these happened contemporaneously.

## **Schedule 6      Minimum content of terms of business—deposit taking business**

(see r 7.2.2)

### **S6.1      Commencement**

When and how the *terms of business* are to come into force.

### **S6.2      Regulatory status**

The *authorised firm's* regulatory status in a form required by *GENE*.

*Note*      See *GENE*, r 3.1

### **S6.3      Services**

The services the *authorised firm* will provide, including, if applicable, the provision of credit, cheque clearing and provision of statements.

### **S6.4      Fees, other payments and interest**

- (1) The *authorised firm's* payment terms, including, if appropriate—
  - (a) how fees are calculated; and
  - (b) how fees are to be paid and collected; and
  - (c) how frequently fees are to be paid; and
  - (d) whether any other payment is receivable by the firm (or to its knowledge by any of its *associates*) instead of fees in relation to an *transaction executed* by the firm with or for the *customer*.
- (2) The *authorised firm's* terms about interest, including, if appropriate—
  - (a) how interest is calculated; and
  - (b) how interest is charged and paid; and
  - (c) how frequently interest is charged and paid.

**S6.5 Conflicts of interests etc**

How conflicts of interest and *material interests* will be dealt with by the *authorised firm*.

**S6.6 Complaints**

Information about—

- (a) the *authorised firm's* internal complaint handling procedures, including information about how a complaint may be made to the firm; and
- (b) if the customer is a retail customer—the availability of the customer dispute resolution scheme.

**S6.7 Instructions**

The arrangement for the *customer* giving instructions to the *authorised firm* and the firm acknowledging them.

**S6.8 Termination**

Termination method and the consequences of termination.

## Endnotes

### 1 Abbreviation key

|      |   |            |       |   |                        |
|------|---|------------|-------|---|------------------------|
| a    | = | after      | ins   | = | inserted/added         |
| am   | = | amended    | om    | = | omitted/repealed       |
| amdt | = | amendment  | orig  | = | original               |
| app  | = | appendix   | par   | = | paragraph/subparagraph |
| art  | = | article    | prev  | = | previously             |
| att  | = | attachment | pt    | = | part                   |
| b    | = | before     | r     | = | rule/subrule           |
| ch   | = | chapter    | renum | = | renumbered             |
| def  | = | definition | reloc | = | relocated              |
| div  | = | division   | s     | = | section                |
| g    | = | guidance   | sch   | = | schedule               |
| glos | = | glossary   | sdiv  | = | subdivision            |
| hdg  | = | heading    | sub   | = | substituted            |

### 2 Rulebook history

#### Conduct of Business Rulebook (COND)

made by

#### **Conduct of Business Rulebook Rule Making Instrument 2007 (RM2007/01 att A)**

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Commenced 1 July 2007

Version No. 1

as amended by

#### **Rulebooks (Miscellaneous Amendments) Rules 2008 (RM2008/01 sch 1, pt 1.3 and sch 2, pt 2.4)**

Made 30 March 2008

Commenced 7 April 2008

Version No. 2

**Rulebooks (Miscellaneous Amendments) Rules 2008 (No2) (RM2008/02 sch 1, pt 1.2 and sch 2, pt 2.2)**

Made 21 September 2008  
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Version No. 3

**Miscellaneous Amendments Rules 2009 (QFCRA Rules 2009-2 sch 1, pt 1.4 and sch 2, pt 2.2)**

Made 6 December 2009  
Commenced 6 December 2009  
Version No. 4

**Miscellaneous Amendments Rules 2010 (QFCRA Rules 2010-1 sch 2, pt 2.2)**

Made 3 February 2010  
Commenced 3 March 2010  
Version No. 5

### 3 Amendment history

**Overview**

pt 1.1hdg ins Rules 2009-2

**Overview of COND**

r 1.1.1 am RM2008/01; Rules 2009-2

**Attachment 1**

r 1.1.2 om Rules 2009-2

**Basic concepts**

pt 1.2hdg ins Rules 2009-2

**Clients, cutomers and market counterparties**

div 1.2.Ahdg ins Rules 2009-2

**Who is a *client*?**

r 1.2.1 ins Rules 2009-2

**Categories of *client***

r 1.2.2 ins Rules 2009-2

**Categories of *customer***

r 1.2.3 ins Rules 2009-2



**Who is a *commercial customer*?**

r 1.2.4 ins Rules 2009-2

**Who is a *business customer*?**

r 1.2.5 ins Rules 2009-2

**Who is a *retail customer*?**

r 1.2.6 ins Rules 2009-2

**Who is a *market counterparty*?**

r 1.2.7 ins Rules 2009-2

**Persons acting for authorised firms—investment business etc**

r 2.2.1 am Rules 2009-2

**Persons acting for authorised firms—insurance mediation business**

r 2.2.2 am Rules 2009-2

**Approved representative—definition**

r 2.2.3 am Rules 2009-2

**Approved representative and non-QFC intermediary—handling client money or insurance money**

r 2.2.7 sub Rules 2009-2  
am Rules 2010-1

**Client classification—general obligation**

r 2.3.1 am Rules 2009-2

**Client classification—opting up**

r 2.3.2 am RM2008/01; Rules 2009-2

**Client classification—customers' agents**

r 2.3.3 am RM2008/01; RM2008/02; Rules 2009-2

**Conflicts and material interests—identifying and managing**

r 2.5.1 am RM2008/01

**Cooperation with staff of the customer dispute resolution scheme**

r 2.6.6 am RM2008/01

**Retail financial promotions—past performance**

r 3.3.3 am Rules 2009-2

**Initial disclosure document—exemptions**

r 4.2.2 am RM2008/01

**Initial disclosure document—content**

r 4.2.3 am RM2008/02

**Product disclosure document—content**

r 4.3.14 am RM2008/01; RM2008/02

**Life policies—additional content**

r 4.3.15 am RM2008/02; Rules 2009-2

**Life policies—illustrations**

r 4.3.16 am RM2008/02

**Life policies—effect of charges and expenses tables**

r 4.3.17 sub RM2008/02

**Life policies—projection calculation rules**

r 4.3.18 am RM2008/02

**Periodic statements—intervals**

r 4.4.8 am Rules 2009-2

**Aggregation of customer orders—allocation**

r 4.5.11 am Rules 2010-1

**Dealing and managing—non-market price transactions**

r 4.5.16 am Rules 2009-2

**Non-investment insurance—renewals**

r 5.5.1 am RM2008/01; Rules 2009-2

**Non-investment insurance—group policies**

r 5.6.3 am RM2008/01

**Non-investment insurance contracts—right to cancel**

r 6.2.6 am Rules 2009-2

**Customer dispute resolution scheme**

ch 8hdg sub RM2008/01

**Functions of scheme**

r 8.1.2 am Rules 2010-1

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### **Confirmation notes—additional information for derivatives**

r S2.2 am Rules 2009-2

### **Investment research recommendations—additional requirements**

r S4.1 am Rules 2009-2

### **Investment research for recommendations—additional requirements for disclosure of interests**

r S4.3 am Rules 2009-2

### **Conduct of business—flowcharts**

att 1 om Rules 2009-2