

SRA Financial Services (Conduct of Business) Rules



Guidance, changes, terms, notes and tags

Introduction

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

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

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

This introduction does not form part of the SRA Financial Services (Conduct of Business) Rules.

Part 1: Application

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Rule 1: Application



1.1 Apart from rule 2 (Status Disclosure), these rules apply to:

- (a) authorised bodies which are not regulated by the FCA
- (b) authorised bodies which are regulated by the FCA but only in respect of their non-mainstream regulated activities and
- (c) the managers and employees of authorised bodies in (a) and (b) above.

and references to "you" in these rules should be read accordingly.

1.2 Where an authorised body is a licensed body, these rules apply only in relation to the activities regulated by the SRA in accordance with the terms of the body's licence.

1.3 Rule 2 applies only to authorised bodies which are not regulated by the FCA

Part 2: Rules

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Rule 2: Status disclosure

2.1 Notwithstanding the wider information obligations in the *SRA Codes of Conduct* you must give the *client* the following information in writing in a manner that is clear, fair and not misleading before providing a service which includes the carrying on of a *regulated financial services activity* and in good time before the conclusion of a *contract of insurance*

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

2.2 Before you provide a service, which includes the carrying on of an *insurance distribution activity* with or for a *client* and in good time before the conclusion of a *contract of insurance*, you must state that you are an *ancillary insurance intermediary* and make the following statement in writing to the *client* in a way that is clear, fair and not misleading:

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

Rule 3: Execution of transactions

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

Rule 4: Records of transactions

4.1 Where you receive instructions from a *client* to effect a *transaction* or make a decision to effect a *transaction* in your discretion, you must keep a record of:

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

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

- (a) the name of the client
 - (b) the terms of the instructions;
 - (c) the date on which the instructions were given; and
 - (d) the name of the other person instructed.
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Rule 5: Record of commissions □

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

- (a) the amount of the commission; and
 - (b) how you have accounted to the client.
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Rule 6: Safekeeping of clients' investments □

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

6.2 Where such assets are passed to a third party:

- (a) you should obtain an acknowledgement of receipt of the property; and
 - (b) if they have been passed to a third party on the client's instructions, you should obtain such instructions in writing.
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Rule 7: Execution-only business □

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

- (a) the client had not sought and was not given any advice from you in connection with the transaction or
- (b) the client was given advice from you in connection with that transaction but nevertheless persisted in wishing the transaction to be effected,

and in either case the transaction is effected on the client's explicit instructions.

Rule 8: Retention of records □

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

Part 3: Insurance distribution activities

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Rule 9: Communication and disclosure

- 9.1** You must ensure that, in relation to insurance distribution
- (a) you communicate all information, including marketing communications, in a way that is clear, fair and not misleading.
 - (b) your marketing communications are always clearly identifiable as such.

Rule 10: General information to be provided

- 10.1** In good time before the conclusion of a contract of insurance you must disclose the following information to clients
- (a) whether you provide a personal recommendation about the insurance products offered;
 - (b) the procedures allowing clients and other interested parties to register complaints about you and information about the out-of-court complaint and redress procedures available for the settlement of disputes between you and your clients
 - (c) whether you are representing the client or acting for and on behalf of the insurer;
 - (d) whether you have a direct or indirect holding representing 10% or more of the voting rights or capital in a relevant insurance undertaking
 - (e) whether a given insurance undertaking or its parent undertaking has a direct or indirect holding representing 10% or more of the voting rights or capital in the authorised body.

Rule 11: Scope of service

- 11.1** Where you propose, or give a client a personal recommendation for, a contract of insurance, then in good time before the conclusion of an initial contract of insurance and if necessary on its amendment or renewal, you must provide the client with information on whether you:
- (a) give a personal recommendation on the basis of a fair and personal analysis;
 - (b) are under a contractual obligation to conduct insurance distribution exclusively with one or more insurance undertakings in which case you must provide the names of those insurance undertakings, or
 - (c) are not under a contractual obligation to conduct insurance distribution exclusively with one or more insurance undertakings and do not give advice on the basis of a fair and personal analysis, in which case you must provide the names of the insurance undertakings with which you may and do conduct business.
- 11.2** If you inform a client that you give a personal recommendation on the basis of a fair and personal analysis:
- (a) you must give that personal recommendation on the basis of an analysis of a sufficiently large

number of insurance contracts available on the market to enable it to make that recommendation;
and

- (b) that personal recommendation must be in accordance with professional criteria regarding which contract of insurance would be adequate to meet the client's needs.

Rule 12: Demands and needs □

- 12.1 Prior to the conclusion of a contract of insurance, you must specify on the basis of information obtained from the client the demands and needs of that client.
- 12.2 The details must be adapted according to the complexity of the contract of insurance proposed and the individual circumstances of the client.
- 12.3 You must give the client a statement of the client's demands and needs prior to the conclusion of a contract of insurance.
- 12.4 Any contract of insurance proposed by you must be consistent with the client's demands and needs and where you have given a personal recommendation to the client you must, in addition to the statement of the demands and needs, provide the client with a personalised explanation of why a particular contract of insurance would best meet the client's demands and needs.

Rule 13: Use of intermediaries □

- 13.1 You must not use, or propose to use, the services of another person consisting of:
 - (a) insurance distribution
 - (b) reinsurance distribution
 - (c) insurance distribution activity, or
 - (d) home finance mediation activityunless the person
 - (i) has permission to carry on the activity under Part 4A FSMA
 - (ii) is permitted to carry on the activity under an exemption made in or under FSMA to the general prohibition set out in section 19 of FSMA
 - (iii) in relation to insurance distribution activity, is not carrying on this activity in the UK or
 - (iv) in relation to home finance mediation activity, is not carrying on this activity in the UK
- 13.2 Before using the services of the intermediary, you must check the Financial Services Register and use the services of that person only if the relevant register indicates that the person is registered for that purpose.

Rule 14: Treating complaints fairly □

- 14.1 Notwithstanding your complaints handling obligations in the SRA Code of Conduct for Firms, you must

have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not a client

Rule 15: Remuneration and the client's best interests

15.1 You must not:

- (a) be remunerated or
- (b) remunerate or assess the performance of the firm's employees in a way that conflicts with their duty to act in each client's best interest.

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

Rule 16: Remuneration disclosure

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

- (a) on the nature of the remuneration received in relation to the contract of insurance
 - (b) about whether in relation to the contract you work on the basis of:
 - (i) a fee, that is remuneration paid directly by the client
 - (ii) a commission of any kind, that is remuneration included in the premium;
 - (iii) any other type of remuneration including an economic benefit of any kind offered or given in connection with the contract; or
 - (iv) a combination of any type of remuneration set out above in (i), (ii) and (iii).
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Rule 17: Fee disclosure: additional requirements

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

17.2 To the extent that it is not possible for the amount in rule 17.1 to be given, you must give the client the basis for its calculation.

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

Rule 18: Means of communication to clients

18.1 Rule 18 applies to all information required to be provided to a client in this Part.

18.2 You must communicate information to the client on paper or using any of the following means:

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

18.3 For the purposes of rules 18.2(a)(i) and (b)(i), the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between you and the client if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of that business is sufficient evidence.

18.4 You must communicate the information:

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

18.5 Where you communicate the information using a durable medium other than paper or by means of a website, you must, upon request and free of charge, send the client a paper copy of the information.

18.6 You must ensure that a client's choice or consent to receive the information by means of a website (whether a durable medium or where the conditions under rule 18.2(b) are satisfied) is an active and informed choice or consent.

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

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

you must also provide the information to the client in accordance with rule 18.2 immediately after the

Rule 19: Cross-selling requirements where insurance is the ancillary product □

- 19.1** When you offer a non-insurance ancillary product or service as part of a package or in the same agreement with an insurance product, you must:
- (a)** inform the client whether it is possible to buy the components separately and, if so must provide the client with an adequate description of:
 - (i)** the different components;
 - (ii)** where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with taking the components separately; and
 - (b)** provide the client with separate evidence of the charges and costs of each component.
- 19.2** When you offer an insurance product ancillary to and as part of a package or in the same agreement with a non-insurance product or service, you must offer the client the option of buying the non-insurance goods or services separately.
- 19.3** Rule 19.2 does not apply where the non-insurance product or service is any of the following:
- (a)** investment service or activities;
 - (b)** a credit agreement as defined in point 3 of article 4 of the MCD which is:
 - (i)** an MCD credit agreement
 - (ii)** an exempt MCD credit agreement
 - (iii)** a CBTL credit agreement or
 - (iv)** a credit agreement referred to in articles 72G(3B) and (4) of the Regulated Activities Order; or
 - (c)** a payment account as defined in point 3 of Article 2 of Directive 2014/92/EU.
- 19.4** Rule 19 shall not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).
- 19.5** In the cases referred to in rules 19.1 and 19.2, you must still comply with other provisions in this Part relating to the offer and sale of insurance products that form part of the package or agreement, including specifying the demands and needs of the client in accordance with rule 12.
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Rule 20: Professional and organisational requirements □

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

- 20.2** In considering a person's good repute, you must as a minimum ensure that the person:
- (a)** has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
 - (b)** has not previously been declared bankrupt,
- unless they have been rehabilitated in accordance with national law.

Rule 21: Insurance product information document and appropriate information □

- 21.1** You must ensure that the clients given objective and relevant information about a policy in good time prior to the conclusion of the policy, so that the client can make an informed decision.
- 21.2** You must provide the information in rule 21.1 to the client
- (a)** whether or not you give a personal recommendation and
 - (b)** irrespective of the fact that the policy is offered as part of a package with:
 - (i)** a non-insurance product or service; or
 - (ii)** another policy.
- 21.3** You must ensure that the level of information provided takes into account the complexity of the policy and the individual circumstances of the client.
- 21.4** When dealing with a client who is an individual and who is acting for purposes which are outside his trade or profession the information provided under rule 21.1 must include an Insurance Product Information Document.
- 21.5** You must provide the information required in rule 21.4 by way of an Insurance Product Information Document for each policy (other than a pure protection contract).
- 21.6** Where you distribute contracts of insurance you must have in place adequate arrangements to:
- (a)** obtain from the manufacturer of the contract of insurance
 - (i)** all appropriate information on the contract of insurance and the product approval process; and
 - (ii)** the identified target market of the contract of insurance; and
 - (b)** understand the characteristics and the identified target market of each contract of insurance.

Rule 22: Exclusions for large risks □

- 22.1** Only rules 9, 13, 14, 18, 19, 20 and 22 apply where you carry on insurance distribution activities for commercial clients in relation to contracts of insurance covering risks within the following categories:
- (a)** railway rolling stock, aircraft, ships (sea, lake, river and canal vessels), goods in transit, aircraft liability and liability of ships (sea, lake, river and canal vessels);

- (b) credit and suretyship, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;
 - (c) land vehicles (other than railway rolling stock), fire and natural forces, other damage to property, motor vehicle liability, general liability, and miscellaneous financial loss, in so far as the policyholder exceeds the limits of at least two of the following three criteria:
 - (i) balance sheet total: £6.2 million;
 - (ii) net turnover: £12.8 million;
 - (iii) average number of employees during the financial year: 250.
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Part 4: Credit-related regulated financial services activities

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Rule 23: Disclosure of information

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

Rule 24: Regulated credit agreements

- 24.1** Where you carry on a credit-related regulated financial services activity involving a proposed regulated credit agreement you must:
- (a) provide adequate explanations to the client in order to enable the client to assess whether the proposed regulated credit agreements suitable to the client's needs and financial situation; and
 - (b) when providing such explanations, comply with the requirements of the FCAC Consumer Credit sourcebook 4.2.5R.
- 24.2** Before entering into a regulated credit agreement as lender, you must assess the client's creditworthiness on the basis of sufficient information to enable you to make the assessment, where appropriate such information will be obtained from the client and, where necessary, from a credit reference agency.
- 24.3** After entering into a regulated credit agreement where you are the lender, if the parties agree to change the total amount of credit, you must update the financial information you hold concerning the client and assess the client's creditworthiness before any significant increase in the total amount of credit.
- 24.4** In the event of you assigning to a third party your rights as lender in relation to a regulated credit

agreement you must inform the client of the assignment.

Rule 25: Appropriation of payments

25.1 Where you are entitled to payments from the same client in respect of two or more regulated credit agreements you must allow the client to put any payments made, in respect of those agreements, towards the satisfaction of the sum due under any one or more of the agreements in such proportions as the client thinks fit.

Rule 26: Consumer credit guidance

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

Supplemental notes

Made by the SRA Board on 30 May 2018.

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

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