

BASIC ADVICE ON STAKEHOLDER PRODUCTS INSTRUMENT 2004

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making powers);
 - (2) section 145 (Financial promotion rules);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. Subject to D, this instrument comes into force on 6 April 2005.
- D. The amendments in Annex A to COB 6.5.15 R and 6.5.37A R will come into force on 1 December 2004.

Amendments to the Handbook

- E. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Principles for Business (PRIN)	Annex A
Conduct of Business sourcebook (COB)	Annex B
Training and Competence sourcebook (TC)	Annex C
Authorisation manual (AUTH)	Annex D
Supervision manual (SUP)	Annex E
Glossary of definitions	Annex F

Citation

- F. This instrument may be cited as the Basic Advice on Stakeholder Products Instrument 2004.

By order of the Board
18 November 2004

Annex A

Amendments to Principles for Business

In this Annex, underlining indicates new text and striking through indicates deleted text.

Classification: designated investment business

1.2.3 G (1) All firms, except those intending only to provide basic advice on a stakeholder product, are required by COB 4.1.4R (Requirement to classify) ~~requires a firm~~ to classify a client before conducting *designated investment business* with or for him, and that classification will be applicable for the purposes of *Principles 6, 7, 8 and 9*.

(2) The person to whom a firm provides basic advice on a stakeholder product will be a private customer for all purposes including the purposes of Principles 6, 7, 8 and 9.

...

3.4.3 G (1) The whole of COB 4.1 (Client classification) applies to a firm intending to conduct, or conducting, *designated investment business other than providing basic advice on a stakeholder product*, and ancillary activities relating to *designated investment business*. Any client classifications established in relation to such business will be applicable for the purposes of *Principles 6, 7, 8 and 9*.

(2) The person to whom a firm provides basic advice on a stakeholder product will be a private customer for all purposes including the purposes of Principles 6, 7, 8 and 9.

Annex B

Amendments to the Conduct of Business Sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

Contents

Chapter

...

5A Providing basic advice on stakeholder products

...

3.2.8 G ...

- (2) *Firms* are reminded that if in the course of making a *financial promotion* of any kind a *representative* gives specific *advice on investments* to a *private customer*, about the suitability of a product for that individual *or provides basic advice on a stakeholder product*, rules on advising and selling in *COB 5* or, as the case may be, 5A, apply.

...

Specific non-real time financial promotions: packaged products

- 3.8.19 R (1) *A firm* must not *communicate* or *approve* a *specific non-real time financial promotion* containing or offering *advice on packaged products*, or *providing basic advice on a stakeholder product*, unless the *promotion* discloses information to show whether the scope of the *advice* which is given or offered is or will be based upon a selection made from:

- (a) the whole market (or from the whole of a named sector of the market); or

...

- (2) *A firm* must not *communicate* or *approve* a *specific non-real time financial promotion* offering *packaged products* or *stakeholder products* produced by a *person*, A:

... (a) that holds out any *person* other than A as the *packaged product's* producer; or

...

3.8.22 R ...

(7) if applicable acts in conformity with the *rules* in COB 4.3 (Disclosing information about services, fees and commission – packaged products), COB 5A.1 (Providing basic advice on Stakeholder Products) and COB 5.1 (Advising on packaged products).

...

4.1 Client classification

Application

4.1.1 R (1) This section applies to a *firm* intending to conduct, or conducting *designated investment business* or *ancillary business* relating to *designated investment business* (but not to a *firm* which in relation to any customer intends only to provide basic advice on a stakeholder product).

4.3 Disclosing information about services, fees and commission - packaged products

Application

4.3.1 R (1) COB 4.3 applies:

~~(a)~~ to a *firm* when carrying on with or for *private customers* any of the following in relation to *packaged products*:

~~(i)~~ *advising*; or
a)

~~(ii)~~ *dealing as agent*; or
b)

~~(iii)~~ *arranging*;
c)

(b) to a *firm*, other than an *insurer*, that carries on in relation to a *life policy* any of the activities in (1) with or for an *intermediate customer* or a *market counterparty*.

(2) COB 4.3, other than COB 4.3.7R (1) and (2), does not apply to a *firm* when providing basic advice on a stakeholder product.

...

5.1 Advising on packaged products

Application

- 5.1.1 R This section applies to a *firm* which gives *advice on investments to a private customer on packaged products* but does not apply to a *firm* when providing basic advice on a stakeholder product.

...

5.2 Know your customer

Application

- 5.2.1 R This section applies to a *firm* that:
- (1) gives a *personal recommendation* concerning a *designated investment* to a *private customer*;

...

- (6) is not an *insurer* and *arranges* (but not merely by *introducing*) a *life policy* for an *intermediate customer* or a *market counterparty*;

But this section does not apply to a *firm* when providing basic advice on a stakeholder product.

...

5.3 Suitability

Application

- 5.3.1 R This section applies to a *firm* when it:
- (1) makes a *personal recommendation* concerning a *designated investment* to a *private customer*;

...

- (3) promotes a *personal pension scheme* by means of a *direct offer financial promotion* to a group of *employees*;

but this section does not apply to a *firm* when providing basic advice on a stakeholder product.

...

5.4 Customer's understanding of risk

Application

- 5.4.1 R This section applies to a *firm* that conducts *designated investment business* with or for a *private customer* but does not apply to a *firm* when providing basic advice on a stakeholder product.

...

After Chapter 5 of *COB* insert a new Chapter 5A as follows, the text of this new chapter is not underlined:

Chapter 5A

5A.1 Providing basic advice on stakeholder products

Application and Purpose

5A.1.1 G This chapter sets out what *firms* must do when *providing basic advice on a stakeholder product*. The *rules* in the chapter are designed to enable *firms* to provide simple, quick and limited advice to *persons* who may be interested in buying a *stakeholder product*. The *rules* assume that *firms* will *provide basic advice* to *persons* who have no practical knowledge of investing in *stakeholder products* or *investments*.

5A.2 Disclosure on making first contact : information about services

- 5A.2.1 R (1) **A *firm* must take reasonable steps to ensure that its *representatives*, on first making contact with a *customer* with a view to *providing basic advice on a stakeholder product*, provide, in a *durable medium*, an *initial disclosure document* that complies with *COB* 4.3.9R (1).**
- (2) **A *firm* must take reasonable steps to ensure that its *representatives* explain the contents of the *initial disclosure document* at the time it is provided to the *customer*.**
- (3) **The requirements in (1) and (2) do not apply:**
- (a) **to the extent that the information has already been given to the *customer* on a previous occasion and it is still likely to be accurate and appropriate for the *customer*; or**
- (b) **if *COB* 5A.2.6R (initial contact by telephone) applies.**
- (4) **A *firm* which is required by this *rule* to provide an *initial disclosure document* to a *private customer* may instead provide the *customer* with a *combined initial disclosure document*, that complies with *COB* 4.3.9R (2), if it has reasonable grounds to be satisfied that the *services* which it is likely to provide to the *customer* will, in addition to *stakeholder products*, relate to one or more of the following:**
- (a) ***regulated mortgage contracts*;**
- (b) ***regulated lifetime mortgage contracts*;**
- (c) ***non-investment insurance contracts*.**

- (5) **A firm must, if requested to do by a customer, provide an explanation of the basis on which it has chosen to market the particular stakeholder products within the range on which basic advice will be given to a customer, including an explanation of why the firm has selected particular product providers.**

Smoothed Products

- 5A.2.2 **R A firm must not provide basic advice on smoothed linked long term products.**
- 5A.2.3 **G COB 5A.2.2R does not prevent a firm from including smoothed linked long term products in regulated activity that does not involve the provision of basic advice.**

Providing a copy of the range of stakeholder products

- 5A.2.4 **R A firm must take reasonable steps to ensure that its representatives provide a copy of the appropriate range of stakeholder products on the request of a customer having regard to the services it is providing or may provide to the customer.**

Terms of business and telephone sales

- 5A.2.5 **R (1) A firm that, pursuant to COB 5A.2.1R, provides a customer with an initial disclosure document containing information that a corresponding rule in COB 4.2 says must be included in terms of business, will satisfy the corresponding rule by providing that information in the initial disclosure document.**
- (2) Any information required by COB 4.2 which is not included in an initial disclosure document provided to a customer in compliance with COB 5A.2.1R can be included at the end of the initial disclosure document provided to the customer or, if provided at the same time, by way of separate items of information.**
- 5A.2.6 **R (1) Where a firm's initial contact with a customer (for a purpose set out in COB 5A.2.1 R) is by telephone, then the firm must provide the following information and satisfy the following requirements before proceeding further:**
- (a) the name of the firm and, if the call is initiated by or on behalf of a firm, the commercial purpose of the call;**
- (b) whether the firm will select from or deal with stakeholder products from a limited number of companies or from a single company;**
- (c) that the firm will provide the customer with only basic advice on stakeholder products and without full assessment of his needs and circumstances;**

(d) that the information given under (a) to (c) will subsequently be confirmed in writing.

- (2) A *firm* which complies with (1) will, subject to (3), satisfy the condition set out in item (1) of *COB 4, Annex 1R*.
- (3) If during the course of a telephone call a *firm* is to conclude a contract (for example for the provision of a mediation services or for the purchase or sale of a *stakeholder product*), it must satisfy the requirements in *COB 4.2.5R* and *COB 4 Annex 1R* as well as comply with (1) and (2) above.

5A.2.7 R If the first contact a *firm* has with a *private customer* with a view to providing basic advice on stakeholder products, is by telephone then the *firm* must send the *customer* an *initial disclosure document* as soon as is reasonably practicable following the conclusion of the call.

5A.3 Scope and range of advice on stakeholder products: general

- 5A.3.1 R
- (1) A *firm* which provides a *private customer* with basic advice on a *stakeholder product* must take reasonable steps to ensure that the scope of the *basic advice* given to a *private customer* is based upon a selection of one of the following:
 - (a) a limited number of providers of *stakeholder products*; or
 - (b) a single provider of a *stakeholder product*.
 - (2) A *firm* which provides a *customer* with basic advice on a *stakeholder product* must do so only on the basis of a *range of stakeholder products* which includes no more than one of each of:
 - (a) a *CIS stakeholder product* or a *linked-life stakeholder product*;
or
 - (b) a *stakeholder pension*; or
 - (c) a *stakeholder CTF*.
 - (3) A *firm* must take reasonable steps to ensure that any of its *representatives* which give basic advice on *stakeholder products* that offer a choice of funds, do not give advice on, or recommend, a particular fund for the *customer*.
 - (4) A *firm* must take reasonable steps to ensure that its *representatives* do not, while they are engaged in providing basic advice on *stakeholder products*, provide advice on products other than those within the *range* offered by the *firm*.
 - (5) A *firm* which has commenced the sales process for *stakeholder products* in respect of a particular *customer* may only depart from that process if:

(a) it has taken reasonable steps to ensure its *representatives* advise the *customer* that *basic advice on stakeholder products* within the *range* offered by the *firm* will not be provided during the period of departure; and

(b) it has taken reasonable steps to ensure its *representatives* do not *provide basic advice* during the period of departure.

(6) A *firm* must take reasonable steps to ensure that if its *representatives* return to the sales process for *stakeholder products* after the period of departure referred to in *COB 5A.3.1R (5)*, they first advise the *customer* that the period of departure has ended and the sales process for *stakeholder products* has recommenced.

5A.3.2 G (1) A *firm* can provide a *customer* with *basic advice on a stakeholder product* on the basis of a range of *stakeholder products* which includes more than one *deposit-based stakeholder product*.

G (2) A *firm* can provide advice on a *deposit based stakeholder product* during the period of departure referred to in *COB 5A.3.1R (5)*.

5A.3.3 G (1) A *firm* which *provides basic advice on stakeholder products* is required by *COB 5A.3.1R (2)* to do so, in relation to any particular *customer*, by reference to a *range of stakeholder products* which should include no more than one of each type of *stakeholder product* specified in *COB 5A.3.1R (2)*. A *firm* may however operate with more than one such *range*.

(2) When a *firm* *provides basic advice on a stakeholder product* which is not produced by the *firm*, it is responsible for the advice given. By contrast, the producer is responsible for the relevant terms and conditions of the *stakeholder product*.

Range of stakeholder products: appointed representatives

5A.3.4 R (1) A *firm* must maintain in writing and keep up to date a statement of:

(a) the scope of *basic advice* (within the meaning of *COB 5A.3.1R (1)*) which each of its *appointed representatives* is, through its contract with the *firm*, permitted to give; and including

(b) the *range* (or *ranges*) of *stakeholder products* on which each *appointed representative* advises.

(2) In applying the *rules in COB* to a *firm* in respect of its *appointed representatives*, references to a *firm's* scope or *range of stakeholder products* are to be taken as references to the scope (or scopes) and to the *range* (or *ranges*) of its *appointed representatives*.

5A.3.5 G An *appointed representative's* *range of stakeholder products* should be defined by means of a list of the names or titles of each of the *stakeholder products* which it is permitted to sell.

Range of stakeholder products: records

- 5A.3.6 R (1) **A firm must make, and keep up to date, a record of its scope and range (or ranges) of stakeholder products.**
- (2) **The record in (1) must be retained for six years from the date on which it was superseded by a more up-to-date record.**
- (3) **The record for distribution to a customer must be the particular range of stakeholder products which is appropriate for the services provided to that customer and include details of:**
- (a) **the identity of the firms within the range whose stakeholder products the firm may sell; and**
- (b) **a list of the products the firm may sell.**
- (4) **A firm must maintain a record of the particular range of stakeholder products on which its basic advice to each private customer is based and such a record must be kept for six years from the date on which the basic advice is given.**

Branding stakeholder products

- 5A.3.7 R **If a firm provides basic advice on a stakeholder product produced by another person, it must not:**
- (1) **hold itself out as the stakeholder product's producer;**
- (2) **do or say anything which might reasonably lead a customer to be mistaken as to the identity of the product's producer.**

Staying within the range of advice of stakeholder products

- 5A.3.8 R (1) **A firm must take reasonable steps to ensure that neither it nor any of its representatives provides basic advice on a stakeholder product unless the product is:**
- (a) **within the firm's range (or ranges) of stakeholder products; and**
- (b) **is within the particular range of stakeholder products on which the firm has indicated it will give basic advice to that customer.**

"Independence" - restriction on holding out

- 5A.3.9 R (1) **A firm must not in providing basic advice on stakeholder products hold itself out as giving such basic advice on an independent basis.**
- (2) **Notwithstanding (1) a firm may use its facilities and stationery which it may use for other business in respect of which it does hold itself out as acting or advising independently.**

Remuneration structure and referrals

- 5A.3.10 R** A *firm* must take reasonable steps to ensure that none of its *representatives*:
- (1)** is likely to be influenced by the structure of his or her *remuneration* to give unsuitable *basic advice* on *stakeholder products* to a *customer*; and
 - (2)** refers *customers* to another *firm* in circumstances which would amount to the provision of an inducement under *COB 2.2.3R* (Prohibition of inducements).

5A.4 Providing basic advice on stakeholder products through scripted questions

- 5A.4.1 R**
- (1)** A *firm* which provides *basic advice on a stakeholder product* must do so through a sales process which incorporates pre-scripted questions put to the *customer*.
 - (2)** Unless excluded at the preliminary stage, a *customer* must be sent or given, in a *durable medium*, a copy of the completed scripted questions and answers.

Suitability of stakeholder products

- 5A.4.2 R**
- (1)** A *firm* must only recommend that a *customer* acquire a *stakeholder product* if:
 - (a)** it has taken reasonable steps to assess:
 - (i)** the *customer's* answers to the scripted questions;
 - (ii)** any other facts, circumstances or information disclosed by the *customer* during the sales process.
 - (b)** it has, having due regard to the information in (a), reasonable grounds for believing that the *stakeholder product* is suitable for the *customer*;
 - (c)** the *firm* reasonably believes that the *customer* understands the advice he has been given and the basis on which it was provided.
 - (2)** The requirements in (1)(b) do not apply in the case of a *deposit-based stakeholder product*.

5A.4.3 G *COB 5A Annex 1 G* contains *guidance* on the steps a *firm* could take to ensure it complies with the requirements in *COB 5A.4.2R* (1); it also includes *guidance* on providing advice on *stakeholder pensions* that will comply with *COB 5A.4.5R*.

5A.4.4 R A *firm* must not recommend or agree that a *customer* make contributions to an *ISA* in excess of the Inland Revenue's *ISA* limits.

5A.4.5 R A *firm* must not, in the course of *providing basic advice*, advise a *customer* on the contribution levels to a *stakeholder pension* needed to achieve a specific income in retirement.

Procedure on making a recommendation

5A.4.6 R On making a recommendation to acquire a *stakeholder product* a *firm* must, subject to *COB* 5A.4.7R, 5A.4.8R and 5A.4.9R, take reasonable steps to ensure that prior to the conclusion of a contract with the *customer* the *representative*:

- (1) explains to the *customer*, if necessary in summary form, the "aims", "risks" and "commitment" sections of the appropriate *key features* together with such other explanation of the *product* as will enable the *customer* to make an informed decision whether to accept the recommendation;
- (2) provides the *customer* with a summary sheet, in a *durable medium*, setting out for each *product* recommended:
 - (a) the specific amounts that the *customer* wishes to pay into each *product*;
 - (b) the reasons for the recommendation, including any information provided by the *customer* on which the recommendation is based, including the *customer's* attitude to risk;
- (3) informs the *customer* that in determining any subsequent complaint the *Ombudsman* may take into account the limited information on which the recommendation is based and that the recommendation is not tailored to take account of those aspects of a *customer's* financial needs and circumstances not covered by its sales process.

5A.4.7 R *COB* 5A.4.6R (1) does not apply to a recommendation to acquire a *deposit-based stakeholder product*.

5A.4.8 R A *firm* may provide the summary sheet required by *COB* 5A.4.6R (2) subsequent to the conclusion of the contract if requested to do so by the *customer* as long as it completes the steps in *COB* 5A.4.9R (1) and (2) prior to concluding a contract with the *customer*.

5A.4.9 R A *firm* which concludes the sale of a *stakeholder product* by telephone must take reasonable steps to ensure that its *representatives*:

- (1) read through the summary sheet required by *COB* 5A 4.6R (2);
- (2) inform the *customer* that in determining any subsequent complaint the *Ombudsman* may take into account the limited information on which the recommendation is based and that the recommendation is not tailored to take account of those aspects of a *customer's* financial needs and circumstances not covered by its sales process;

- (3) send the *customer* as soon as possible after that a copy of the *firm's* summary sheet, and the completed answers and questions, in a *durable medium*.

Record of recommendations

- 5A 4.10 R** A *firm* must keep in a *durable medium* a record of each recommendation to acquire a *stakeholder product* and the *customer's* summary sheet and such a record must be kept for not less than six years from the date of the recommendation.

COB 5A Annex 1G sales processes for stakeholder products

This Annex forms part of COB 5A.4.3G and gives *guidance* on the standards and requirements to which a *firm* may have regard in designing a sales process for *stakeholder products* which meets the requirements of COB 5A.4.2R.

General Standards – all sales

1. A sales process for *stakeholder products* may allow the *representative* administering it to depart from scripted questions where this is desirable to enable the *customer* to better understand the points that need to be made provided this is compatible with the *representative's* competence and the degree of support offered by the *firm's* software and other systems. A software based system is more likely to provide an adaptable means of providing prompts and support for *representatives* which may accordingly support a more flexible sales process.
2. Questions, statements and warnings provided to a *customer* should be short, simple and couched in plain language that *customers* will understand. Questions should address one issue at a time.
3. The sales process should enable the *customer* to exit freely and without pressure at any stage and should make provision for the *representative* to terminate the process if at any stage it appears that there is no likelihood of any *product* being suitable for the *customer* (whether by reason of the affordability of *products* for the *customer*, the need to address other financial priorities (see below), the mis-match of risk or otherwise).
4. Where necessary the sales process should incorporate procedures to allow uncertainties in the *customer's* answers to be addressed before proceeding further and should generally reflect caution about proceeding further if clarification or further information cannot be obtained during the process (this would be likely to be the case for example if a *customer* were unable to confirm whether he or she was eligible for membership of an *occupational pension scheme*).

Preliminary - all sales

5. The following preliminary information and explanation should be given to the *customer* :

- (a) only *basic advice* will be given about *stakeholder products*;
 - (b) *stakeholder products* are intended to provide a relatively simple and low-cost way of investing and saving;
 - (c) the *range of products* on which the representative will give advice to that *customer*;
 - (d) the *customer* will be asked a series of questions about his or her circumstances and needs and at the end of the procedure he or she may be recommended to acquire a *stakeholder product*;
 - (e) that the assessment of whether a *stakeholder product* is suitable will be made without a detailed assessment of the *customer's* needs but will be based only upon the information disclosed during the questioning process; and
 - (f) the *customer's* answers will be noted and that at the end of the process, if a recommendation to acquire a *stakeholder product* is made, the *customer* will be provided with a copy of the completed questionnaire.
6. Following 5, the *customer* should be asked if he or she wishes to proceed and, if not, the sales process should cease.

Affordability - all sales

7. If it appears that the *customer* will be likely to be unable to afford a *stakeholder product*, the sale should be terminated at that stage and the *customer* given an explanation together with a copy of the questions and answers completed to that point.

Financial Priorities and Debt - all sales

8. A *customer* should be assessed to ascertain other possible financial priorities such as the need for insurance protection for self or dependents, the need for access to liquid cash to meet an emergency, or, a need to reduce a level of existing debt and, if appropriate, the *customer* should be given an unambiguous warning about the desirability of meeting those other priorities before making payments to a *stakeholder product*.
9. A stronger warning about the desirability of addressing debt as a priority should be given if it appears that the *customer* is significantly indebted, and particularly where there is a strong indication that such debt commitments may render any new commitment unaffordable in the short-term. For this purpose a *firm* should consider using a threshold or indicator to decide whether a *customer* should be excluded on the basis of affordability. Examples may include where the *customer* has (a) annual unsecured debt repayments in excess of 20% of gross annual income or (b) four or more active forms of unsecured credit or (c) has consistently reached his overdraft limit. A *firm* should review its chosen indicator or threshold regularly to ensure that it reflects prevailing economic conditions and takes account of industry best practice.
10. A *firm* should clearly explain the information it is seeking in respect of a *customer's* 'debt' and consider the use of a range of alternative words, such as 'loans', 'repayable

student loans 'borrowing' or 'other forms of credit', to ensure all relevant information is obtained. A *firm* may use a simple reckoner to assess *customer* debt but should be conscious of the nature of, and not give impression that they are providing anything more than, *basic advice*.

11. After a *firm* has given either or both of the warnings mentioned in 8 and 9 above, the *customer* should be invited to consider whether the sales process should be terminated at that stage.

Saving and investment objectives – all sales (except establishing a stakeholder CTF)

12. A *customer's* savings and investment objectives, including the period over which the *customer* wishes to save or invest, should be ascertained including whether:
 - (a) early access to some or all of the amount saved or invested could be important;
 - (b) the *customer* wishes to save or invest for retirement; or whether
 - (c) the *customer* wants to accumulate a specific sum by a specific date.
13. If the information obtained under 12 above indicates that the *customer's* objective:
 - (a) is as described in 12 (c) then normally no *CIS*, *linked life stakeholder product* or topping up of a *stakeholder CTF* should be recommended; or
 - (b) is to save or invest for the short term only or that early access to the whole accumulated sum may be important, then no *CIS*, *linked life stakeholder product*, *stakeholder pension* or topping up of a *stakeholder CTF* should normally be recommended.

Tolerance of risk – all sales

14. If a *customer* is not, in any circumstances, willing to accept any risk of the capital value of an investment being reduced then normally no *CIS*, *linked life stakeholder product*, or *stakeholder CTF* should be recommended. However a *firm* may, if it is appropriate, explain the effect of inflation on long-term savings especially in relation to pensions and invite the *customer* to consider his attitude to risk in the light of that explanation.
15. If a *customer* is willing to accept the risk of capital reduction in some circumstances but not others then, before any recommendation to acquire a *CIS* or *linked life stakeholder product* is made, the *customer* should be reminded of the other circumstances in which he or she is unwilling to accept risk to capital.

Stakeholder pensions

16. A *stakeholder pension* should not be recommended and instead the *customer* should be advised to seek alternative or further *advice* if it appears that the *customer* :
 - (a) has or will have access to an *occupational pension scheme*; or

- (b) is likely to view income in retirement from state benefits as sufficient; or
- (c) already has a pension to which he or she could make further contributions; or
- (d) wishes to retire within five years.

17. In addition to providing the advice in 16, a *firm* may also want to advise the customer that there may be more beneficial courses of action than buying a *stakeholder pension* (for example joining an *occupational pension scheme*).
18. A *firm* designing a sales process for use in the workplace may take account of the benefits offered by the employer. If a *firm* recommends a *stakeholder pension* on the basis of benefits provided by an employer then it should explain the basis of the recommendation to the *customer* and suggest that the *customer* seek *advice* if he or she has any concerns.
19. A *firm* should design its processes with a view to addressing the risk that *customers* will fail to appreciate the significance of questions about their pension provision and should accordingly incorporate a range of questions and information designed to foster the *customer's* understanding of the issues and to elicit appropriate information.
20. *Customers* should be told that a *stakeholder pension* is life-styled and what this means.
21. A *firm* may provide a copy of the pension table specified in COB 6 Annex 1 R for the *customer's* reference but in doing so should also provide and explain the caveats and assumptions behind the table. A *firm* should make it clear that the decision on how much to invest is the *customer's* responsibility and that he should get further advice if has any concerns.

Child Trust Funds

22. A *firm* is reminded of its obligation to provide a *customer* with the information relating to *stakeholder CTFs* that is specified in COB 6.5.40R (7)(a), (b), (d) and (e).

ISAs

23. It should be ascertained whether the *customer* has already opened an *ISA* (whether a "maxi" or "mini" version) and if so whether it would be appropriate for the *customer* to open a non-*ISA* version of the same *product*.

Amendment to Chapter 6 of COB

6.3 Post-sale confirmation: life policies

...

Exceptions to post-sale confirmation

6.3.6 R A *long term insurer* need not send or give the post-sale confirmation required by COB 6.3.3R when:

...

- (3) the *life policy* is purchased by the trustees or manager of a *stakeholder pension scheme* or if the *life policy* is otherwise sold as a *stakeholder product*;

...

6.5.15 R A *firm* must include a *projection*, illustrating how the principal terms of the proposed transaction apply to the *private customer*:

- (1) where the proposed transaction is for a *life policy* (other than:

(a) a *long-term care insurance contract* which is a *pure protection contract*); ~~or~~

(b) a *linked life stakeholder product*;

(c) one that relates to a CTF or a stakeholder product sold through basic advice;

- (2) where the proposed transaction does not relate to a CTF or a stakeholder product sold through basic advice and is for a scheme or a linked life stakeholder product;

...

...

6.5.19 R (1) A *life policy projection* within *key features* must be specified to the *private customer*, calculated on the basis of the *private customer's* age and sex, the sum assured, the *premium* and other principal factors of the proposed *life policy* unless:

(a) the *life policy* is a single premium *life policy*; or

...

(d) the *key features* are part of a *direct offer financial promotion*; ~~or~~

(e) the projection is in respect of a stakeholder product (which is not a stakeholder pension);

...

...

6.5.25 R When completing COB 6.5.24R a *firm* must:

- (1) under the heading "the early years" include figures for the first five years of the *life policy* or, if the *life policy* has a fixed term of less than five years, as many of them as fall before the maturity date;

...

- (9) (b) the standard ten-year figure must be used for the reduction in yield and the accompanying words amended accordingly;
- (10) in the case of a stakeholder product (which is not a stakeholder pension) the table may be given on the basis of generic figures and values.

...

6.5.32 R When including the contents of COB 6.5.31R a *firm* must replace the wording in brackets as directed by the instructions in those brackets and:

- (2) when the inclusion of a *scheme projection* within the *key features* is compulsory in accordance with *cob* 6.5.13R (2), include figures calculated in accordance with COB 6.6 (Projections):

...

- (10) in the case of a stakeholder product (which is not a stakeholder pension) the table may be given on the basis of generic figures and values.

...

CTFs and stakeholder products: annual charges

6.5.37A R (1) If a *firm* imposes one annual charge including expenses, it need not make the detailed disclosures required by COB 6.5.24R and COB 6.5.30R; but if it does not make those disclosures, it must instead include either:

- (a) the following statement (the last sentence must be included if and only if it is clear at the time of acquisition that the annual charge will reduce to r % after a fixed period):

"There is an annual charge of [y]% of the value of the funds you accumulate. If your fund is valued at £250 throughout the year, this means we deduct [£250 x y/100] that year. If your fund is valued at £500 throughout the year, this means we deduct [£500 x y/100] that year. After ten years these deductions would reduce to [£250 x r/100] and [£500 x r/100] respectively."

or;

- (b) the information required by COB 6.5.20R.

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...
<u>COB 5A.3.4R</u>	<u>The scope of basic advice which a firm's appointed representative is permitted to give (including the range of stakeholder products on which each appointed representative advises.)</u>	<u>The scope of basic advice each appointed representative is permitted to advise</u>	<u>At the time an appointed representative is permitted to provide basic advice.</u>	<u>6 years from the date on which the record is superseded by a more up-to-date record</u>
<u>COB 5A.3.6R (1)</u>	<u>A firm's scope and range of stakeholder products</u>	<u>A firm's scope and range of stakeholder products</u>	<u>When a firm commences providing basic advice</u>	<u>6 years from the date on which the record is superseded by a more up-to-date record</u>
<u>COB 5A.3.6R (4)</u>	<u>The range of stakeholder products on which a firm's basic advice to a private customer is based</u>	<u>The range of stakeholder products on which a firm's basic advice to a private customer is based</u>	<u>When a firm commences providing basic advice</u>	<u>6 years from the date on which the advice is given</u>

Annex C

Amendments to Training and Competence sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.1.4 R Table Activities to which TC 2 Applies

	Activity	Extent of Application
1. <i>Employees</i> engaging in:	<p><u>Advising and dealing</u></p> <p>(a) <i>advising on investments</i> which are, and dealing with or for <i>clients</i> in, <i>securities</i> (other than <i>stakeholder pension schemes</i> or <i>broker funds</i>) and <i>derivatives</i>;</p> <p>...</p> <p>(r) <i>advising ... contracts</i>;</p> <p>(s) <u><i>providing basic advice on stakeholder products</i> (other than a <i>deposit-based stakeholder product</i>).</u></p>	If the activity...

...

2.4.2 R (2) (1)(a) does not apply when this activity is an *insurance mediation activity* in relation to a *non-investment insurance contract* or is *providing basic advice on stakeholder products*.

...

2.4.5 R (2) (1)(b) does not apply when this activity is an *insurance mediation activity* in relation to a *non-investment insurance contract* or is *providing basic advice on stakeholder products*.

...

2.5.1A R The time limits to which TC 2.5.1 R applies

Activity in TC2.1.4.R	Examination must be passed
1.(a)-(c)	before starting the activity
...	...
(s)	(no examination requirement)

...

2.7.5 R If an *employee* who is not assessed as competent is engaging in the activity of giving advice on *investments* which are *packaged products* (other than *basic advice*) to *private customers*, the *firm* must ensure that the individual supervising that *employee*:

...

Annex D

Amendments to the Authorisation manual

In this Annex, underlining indicates new text and striking through indicates deleted text.

Providing basic advice on stakeholder products

- 2.7.14A G This activity covers advice in the form of a recommendation given to a retail consumer. The recommendation must relate to a stakeholder product and certain conditions must be met. These conditions are based on the need for the adviser to make an assessment of the consumer's needs based on the answers that the consumer provides to a series of pre-scripted questions. A fuller description of the activity is given in AUTH 2.7.14BG and explains what is meant by "retail customer". This activity is separate to the regulated activity of advising on investments (see AUTH 2.7.15G (Advising on investments)). The existence of this separate advising activity does not prevent a person from giving advice on stakeholder products in circumstances that do not satisfy the conditions set out in AUTH 2.7.14BG. But such advice is likely to amount to advising on investments unless the stakeholder product is a deposit. Neither does the existence of the activity prevent a person from selling stakeholder products in any other manner provided the person has the appropriate permission.
- 2.7.14B G A person ('P') carries on the regulated activity of providing basic advice on a stakeholder product when:
- (1) P gives the advice:
 - (a) to a person ('C') who does not receive the advice in the course of a business that he carries on; and
 - (b) in the course of a business that P carries on;
 - (2) the advice is on the merits of C opening or buying a stakeholder product;
 - (3) the following conditions are met:
 - (a) P asks C questions to enable P to assess whether a stakeholder product is appropriate for C;
 - (b) if P, relying solely on the information provided by C in response to the questions referred to in (a), assesses that a stakeholder product is appropriate for C, P:
 - (i) describes that product to C; and
 - (ii) gives a recommendation of that product to C; and

(4) C has indicated to P that he has understood the description and recommendation referred to in (3)(b).

2.7.16A G In certain circumstances, the activity of *advising on investments* can also amount to *providing basic advice on a stakeholder product* (see *AUTH 2.7.14A (Providing basic advice on stakeholder products)*).

...

AUTH 2 G
Annex 2

Regulated activities and the permission regime

AUTH 2 Annex 2 Table 1:

Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding entry in column 1) may be carried on
...	
Designated investment business [see note 1A and 1B to Table 1]	
...	
(p) <i>establishing, operating or winding up a stakeholder pension scheme</i> (article 52)	
(pp) <i>providing advice on a stakeholder product</i> (article 52B)	<u>those <i>specified investments</i> that are also a <i>stakeholder product</i> [see note 7])</u>
...	

...

Note 7:

A stakeholder product is defined in the *Glossary* as:

- an investment of a kind specified in the *Stakeholder Regulations*;
- a stakeholder pension scheme; and
- a stakeholder CTF.

...

3.6.4 G (5) COB 4.1.4R does not apply to a firm which, in relation to any customer, intends only to provide advice on a stakeholder product.

...

App 1.24.3 G Each of the aspects referred to in *AUTH* App 1.24.2G is considered in greater detail in *AUTH* App 1.25 to *AUTH* 1.29. In addition, under article 52A of the *Regulated Activities Order providing advice on a stakeholder product is a regulated activity and under article 56 of the Regulated Activities Order...*

Annex E

Amendments to the Supervision manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

...

12.2.7 G (1) ...

...

- (h) ~~advising on investments (article 53 of the *Regulated Activities Order*) (that is in summary, on any designated investment, funeral plan contract or right to or interest in a funeral plan); providing basic advice on stakeholder products (article 52B of the *Regulated Activities Order*);~~
- (i) ~~advising on regulated mortgage contracts (article 53A of the *Regulated Activities Order*); and advising on investments (article 53 of the *Regulated Activities Order*) (that is in summary, on any designated investment, funeral plan contract or right to or interest in a funeral plan);~~
- (j) ~~agreeing to carry on a regulated activity (article 64 of the *Regulated Activities Order*) where the regulated activity is one of those in (a) to (g);~~ advising on regulated mortgage contracts (article 53A of the *Regulated Activities Order*); and
- (k) agreeing to carry on a regulated activity (article 64 of the *Regulated Activities Order*) where the regulated activity is one of those in (a) to (h).

...

12.2.8 G (2) The permitted scope of appointment of an *introducer appointed representative* does not include in particular:

...

...

(d) *advising on investments, providing basic advice on stakeholder products, advising on regulated mortgage contracts or other activity that might reasonably lead a customer to believe that he had received basic advice or advice on investments or on regulated mortgage contracts or that the introducer appointed representative is permitted to provide basic advice or give advice on investments or on regulated mortgage contracts.*

12.5.2 G (2) ...

(e) provides basic advice on stakeholder products;

Annex F

Amendments to the Glossary

In this Annex, underlining indicates new text and striking through indicates deleted text.

Insert or amend the following definitions in the appropriate alphabetical position:

<u>basic advice</u>	see <u>providing basic advice on a stakeholder product</u>
<u>branded fund</u>	A life policy or a regulated collective investment scheme other than a broker fund which is available as an investment only or mainly to the clients of a particular independent intermediary firm other than a provider firm. (a) ... into which cash contributions of that independent intermediary's firm's customers have been made; (b) ... into which the cash contributions of that independent intermediary's firm's customers have been made;
<u>CIS stakeholder product</u>	<u>the stakeholder product specified by regulations 5 (units in certain collective investment schemes) and 7 of the Stakeholder Regulations;</u>
<u>combined initial disclosure document (CIDD)</u>	information about the scope and nature of the services offered by a firm in relation to: (a) a combination of two or more of the following: (a)(i) <u>packaged products;</u> (ii) <u>non-investment insurance contracts;</u> (iii) <u>regulated mortgage contracts;</u> (iv) <u>regulated lifetime mortgage contracts;</u> <u>or</u> (b) <u>a combination of two or more of the following;</u> (i) <u>stakeholder products;</u> (ii) <u>regulated lifetime mortgage contracts;</u> (iii) <u>regulated mortgage contracts;</u> (iv) <u>non-investment insurance contracts.</u>

<u>deposit-based stakeholder product</u>	<u>the stakeholder product specified by regulation 4 (certain deposit accounts) of the Stakeholder Regulations;</u>
<u>designated investment business</u>	Any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business: <ul style="list-style-type: none"> (a) ... (p) <u>providing basic advice on a stakeholder product (article 52B).</u>
<u>initial disclosure document (IDD)</u>	information about the scope and nature of the services offered by a <i>firm</i> in relation to <u>packaged products</u> as required by COB 4.3.7R; or <u>stakeholder products</u> as required by COB 5A.2.1R (1).
<u>linked life stakeholder product</u>	<u>the stakeholder product specified by regulations 6 and 7 (rights under certain linked long-term contracts) of the Stakeholder Regulations;</u>
<u>packaged product</u>	<ul style="list-style-type: none"> (a) a <i>life policy</i> (b) a <i>unit</i> in a <i>regulated collective investment scheme</i>; (c) an interest in an <i>investment trust savings scheme</i>; (d) a <i>stakeholder pension scheme</i> <p>whether or not (in the case of (a), (b) or (c)) held within a <i>PEP</i> or, an <i>ISA</i> or a <i>CTF</i> and whether or not the <i>packaged product</i> is also a <u>stakeholder product</u>.</p>
<u>private customer</u>	<ul style="list-style-type: none"> (1) (except in COB 3, COB 4.2 and COB 6.4) a <i>client</i> who is not a <i>market counterparty</i> or an <i>intermediate customer</i>, including: <ul style="list-style-type: none"> ... (e) <u>a person to whom a firm provides basic advice on stakeholder products;</u> ...
<u>providing basic advice on a stakeholder product</u>	<u>the regulated activity, specified in article 52B of the Regulated Activities Order (providing basic advice on stakeholder products)], which is in summary, advising on certain relatively low cost products by means of questions.</u>
<u>regulated activity</u>	(in accordance with section 22 of the <i>Act</i> (The classes of activity and categories of investment)) any of the following activities specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities): <ul style="list-style-type: none"> ... (oa) <u>providing basic advice on a stakeholder product (article 52B);</u>

(p) ...

range see range of packaged products and range of stakeholder products

range of packaged products, range (in relation to a firm) the range of packaged products on which the firm gives advice on investments to private customers (see COB 5.1.6 A) or if appropriate the list of packaged products in which the firm deals.

range of stakeholder products, range (in relation to a firm) the range of stakeholder products on which the firm gives advice (see COB 5A.3.2R);

Delete the existing definition for ‘representative’ and replace with the following definition:

representative an individual who:

- (a) is appointed by a *firm*, or by an *appointed representative* of a *firm*, to carry on any of the following activities:
 - (i) *advising on investments*;
 - (ii) *providing basic advice on stakeholder products*;
 - (iii) *arranging (bringing about) deals in investments* ;
 - (iv) *dealing in investments*; or
- (b) although not appointed to do so, carries on any of the activities in (i) to (iii) on behalf of a *firm* or its *appointed representative*.

smoothed linked long term stakeholder product the stakeholder product specified by regulations 6, 7 and 8 (smoothed linked long term contracts) of the Stakeholder Regulations;

stakeholder CTF a CTF that has the characteristics and complies with the conditions set out in paragraph 2 of the schedule to the CTF Regulations;

stakeholder product (as defined in article 52B(3) of the Regulated Activities Order):

- (a) a stakeholder CTF; or
- (b) a stakeholder pension scheme; or
- (c) an investment of a kind specified in the Stakeholder Regulations.

Stakeholder Regulations the Financial Services and Markets Act 2000 (Stakeholder Products) Regulations 2004 (SI 2004/2738).