

CONDUCT OF BUSINESS SOURCEBOOK (AUTOMATIC ENROLMENT INTO QUALIFYING PENSION SCHEMES) INSTRUMENT 2011

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers); and
 - (c) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 October 2012.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (Automatic Enrolment into Qualifying Pension Schemes) Instrument 2011.

By order of the Board
26 May 2011

Annex A

Amendments to the Glossary of definitions

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

<u><i>automatic enrolment scheme</i></u>	<u>a scheme that meets the conditions in Part 1 of the Pensions Act 2008. In summary this is a qualifying <i>occupational pension scheme</i> or qualifying <i>personal pension scheme</i> that enables automatic enrolment arrangements to take place.</u>
<i>distance contract</i>	<p>any contract concerning financial services concluded between a supplier and a <i>consumer</i> under an organised distance sales or service provision scheme run by the supplier which, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication (that is, any means which, without the simultaneous physical presence of the supplier or intermediary and the <i>consumer</i>, may be used for the distance marketing of a service between those parties) up to and including the time at which the contract is concluded.</p> <p>A contract is not a distance contract if:</p> <ul style="list-style-type: none"> (a) making, performing or marketing it does not constitute or form part of a <i>regulated activity</i>; <u>or</u> (b) it is entered into on a strictly occasional basis outside a commercial structure dedicated to the conclusion of distance contracts; or (c) a <i>consumer</i>, and an intermediary acting for a product provider, are simultaneously physically present at some stage before the conclusion of the contract; <u>or</u> (d) <u>it is entered into to comply with the requirement in Part 1 of the Pensions Act 2008 to automatically enrol or re-enrol employees into an <i>automatic enrolment scheme</i>.</u> <p>[Note: recitals 15 and 18 to, and articles 2(a) and (e) of, the <i>Distance Marketing Directive</i>]</p>
<i>pension opt-out</i>	<p>a transaction, resulting from the decision of a <i>retail client</i> who is an individual to:</p> <ul style="list-style-type: none"> (a) opt out of an <i>occupational pension scheme</i> <u>or <i>group personal pension scheme to which his employer contributes and of which he is a member</i></u>; or (b) decline to become a member of an <i>occupational pension</i>

scheme or group personal pension scheme to which his employer contributes and of which he is eligible to join, or will be eligible to join at the end of a waiting period;

in favour of a stakeholder pension scheme or a personal pension scheme.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

13.3 Contents of a key features document

General requirements

13.3.1 R A *key features document* must:

...

(2) explain:

...

- (e) (for a *personal pension scheme* that is not an *automatic enrolment scheme*) clearly and prominently, that *stakeholder pension schemes* are generally available and might meet the *client's* needs as well as the scheme on offer.

...

15.5 Special situations

...

Other legislation including for child trust funds and automatic enrolment into pensions

15.5.2 R This chapter applies as modified to the extent necessary for it to be compatible with any enactment.

15.5.3 G For example:

(1) ...

(2) where legislation does not permit sums within a *personal pension scheme* or *CTF* to be returned to a *consumer*, the requirement to do so on cancellation is modified to permit payment to another provider on behalf of the *consumer*, the *firm* should notify him, where relevant, as soon as possible that it holds money awaiting re-investment instructions; if that money is held in a non-interest bearing account this should be drawn to his attention;

(3) the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 contain provisions relevant to cancellation rights; in particular they provide rights of opt-out from

an automatic enrolment scheme; the cancellation rights in this chapter are modified to permit a provider to adopt the opt-out process in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 in relation to all members of an automatic enrolment scheme; the cancellation rules will continue to apply for any single premium contributions or transfers where these would normally attract this right.

...

19.2 Personal pensions, FSAVCs and AVCs

...

Suitability

...

- 19.2.2 R When a *firm* prepares a *suitability report* it must:
- (1) (in the case of a *personal pension scheme*), explain why it considers the *personal pension scheme* to be at least as suitable as a *stakeholder pension scheme*; and
 - (2) (in the case of a *personal pension scheme, stakeholder pension scheme or an FSAVC*), explain why it considers the *personal pension scheme, stakeholder pension scheme or FSAVC* to be at least as suitable as any ~~*stakeholder pension scheme, AVC or*~~ facility to make additional contributions to an *occupational pension scheme or group personal pension scheme* which is available to the *retail client*.