The Isle of Man Financial Services Authority Conduct of Business Code

Questions and Answers

In recent years the Isle of Man Financial Services Authority (IOMFSA) has been working on a number of developments which provide a roadmap for updating the Isle of Man's regulatory framework for insurance business.

One of the key developments is the issue of revised mandatory rules, which set out how authorised companies operate. This is the Conduct of Business – Long Term Business Code 2018 (the COBs Code).

In its guidance notes the IOMFSA states:

"…where an insurer has made available assets for linking to its portfolio bond products that are stated to be suitable only for experienced, sophisticated or professional categories of investor, the Authority considers it appropriate for insurers to take steps to determine that the policyholder meets the criteria for investment in the chosen asset, including obtaining informed consent from the policyholder. This may be in the form of disclosure to the policyholder and informed consent/certification by the policyholder that he or she is of the required investor status for the asset/fund."

The new rules became effective on 1 January 2019; other changes will be phased in from 1 July 2019. The revised code impacts all Friends Provident International Limited (FPIL) businesses and regional offices. You can view more information on the IOMFSA website:

https://www.iomfsa.im/fsa-news/2018/nov/insurance-conduct-of-business-long-term-business-code-2018/

We have emailed advisers and customers to inform them of the changes that will impact them, and advising that customers will be not be able to invest in certain specialist ('non-retail') funds, unless they confirm that they are appropriately knowledgeable and qualified to do so. Our customers are generally 'retail clients' which means they can only invest in funds that are available to the general public. Our product literature, as well as our internal investment acceptance criteria, is being changed to reflect the new rules.

This Q&A document explains the changes in more detail, as well as the impact on FPIL and its customers.

What is the significance of the 1 January 2019 implementation date?

With effect from 1 January 2019 FPIL requires all policyholders to be classified as either a retail or a non-retail (qualified/professional) investor.

A client's investor status will be determined by the completion of a declaration at the time they make their initial investment, or when making an additional investment to an existing policy.

Clients holding open architecture investment products may be classified as either retail or non-retail investors, however all clients are initially classified as retail clients by default

Clients holding unit linked policies are classified as retail clients by default and may only invest in assets suitable for retail clients. The FPIL mirror fund range has been updated to provide retail fund links only.

Where a client holds their policy through a Trustee/Corporation or equivalent, the investor status declaration will apply to the underlying member and not the appointed institution/entity.

Please see Appendix 1 for more details on the FPIL definitions of retail/non-retail investors.

What do advisers and policyholders need to do?

There is no immediate action required from advisers or policyholders. During the lifecycle of a policy, a policyholder's investor status will be retested if appropriate, for example when making a new investment

How does the introduction of the new COBs Code affect a policy?

The COBs Code is designed to enhance levels of client protection by introducing additional safeguards to ensure that clients have access to appropriate investments based on their level of knowledge and experience as a retail or non-retail investor.

Advisers must consider a client's investor status prior to investing thereby ensuring any assets purchased are suitable for the type of investor they are working for.

Does the COBS code affect policies based in Hong Kong, Singapore and UAE?

Yes. As FPIL's lead regulator is the IOMFSA the COBs code applies to all FPIL business, regardless of the region in which the business was received

Why do I need to complete an investor declaration at top up stage?

FPIL treats all policyholders as retail clients by default. When a client tops up their policy, it provides FPIL with a further opportunity to check their investor status during the top up process.

There are various transaction types that will trigger an investor status check, including policy assignment, claims and dealing.

Is the investor status declaration included in the application paperwork?

Yes. Our literature is currently undergoing revisions to include COBs related updates as appropriate.

A policyholder holds an externally managed account via a discretionary manager; does the COBs code apply to their account?

Yes, the COBs code does apply to externally managed accounts, however as the manager operates on a delegated mandate as a professional investor, following an agreed investment strategy, it is not necessary for them to obtain informed consent from their clients prior to the placement of each trade.

Does the COBs code require changes to the legal agreements that FPIL has with external account managers?

No. The existing legal arrangements FPIL has with external account managers remain unchanged.

Can you provide a list of all retail/non-retail assets?

For clients who hold unit linked products, all assets that FPIL makes available for selection are classified as retail assets. A list of all retail funds available on our unit linked products can be viewed by clicking the relevant link below:

ROW:

UAE:

Singapore:

For clients holding an open architecture product, it is possible to hold both retail and non-retail assets within their bond. Retail clients can only hold retail assets; whereas non-retail clients can hold both retail and non retail assets. The range of assets that can be held within this type of product is almost unlimited and therefore it is not possible to provide a list of available assets or asset classifications which would apply to each investor status.

Some historical assets, which were previously deemed permissible, may no longer be accepted for investment by FPIL. At the point of trading our Dealing/Technical team will highlight any assets that may be unsuitable depending on the investor status as a retail/non-retail client.

What will happen to existing non-retail assets held in a client's policy?

From 1 January 2019, any existing retail clients identified as holding non-retail assets can continue to hold these positions in their client accounts. No further trading will be permitted where it would result in an increase of an existing holding or the creation of a new position, now or in the future, unless the client can meet the non-retail client criteria.

Existing non-retail clients can continue to purchase retail and non-retail investments. Asset vetting checks will apply prior to every purchase.

How does a policyholder change their investor status?

The trigger for a change of investor status will be an instruction to invest in an asset that is not permissible based on the client's investor status at that time. The client can confirm their change of investor status via an email and it will be necessary for them to complete a declaration to the effect that they satisfy the minimum criteria to be treated as a non-retail investor. This can be done at any time and the process needs to be completed before the client purchases a non-retail asset. The declaration will vary depending on the asset and the FPIL branch.

FPIL operates checks at the point of trading, to ensure the investments selected are suitable for the client's investor status we hold on file.

If a client wishes to change their investor status from retail to non-retail, this can be discussed with our Dealing/Technical Team prior to trade placement.

Is Commission Disclosure part of the COBs code?

Yes. Commission disclosure forms part of the COBs code and comes into effect from 1 July 2019. The disclosure includes soft commissions; which is where an intermediary receives remuneration directly from a fund manager for placing the business with them

An adviser has placed a policyholder in assets that are unsuitable for a retail investor; does the COBs code allow the policy to be cancelled penalty free?

No. Questions around the suitability of investments selected must be raised with the adviser in the first instance.

FPIL is a product provider and is not authorised to give investment advice. As acknowledged by policyholders in the declarations set out in the application form, a adviser acts as an agent of the policyholder and not as an agent of FPIL. They are responsible for providing guidance as to the suitability of an investment for a policyholder's own individual circumstances.

The adviser as Fund Adviser/Investment Manager/Investment Adviser (If appointed) is responsible for asset selection. FPIL does not consider any asset as a suitable investment and therefore acts in an execution only capacity.

The COBs code does not alter existing cancellation or other contractual rights as detailed in our policies' terms and conditions.

Is there any information available directly from the regulator?

The IOMFSA has provided their own Q&A document relating to COBS, which can be viewed here: https://www.iomfsa.im/media/2529/conduct-of-business-code-qa.pdf

What can I do if I don't understand the implications of the COBs changes?

If you have any queries in relation to how the COBs changes impact policyholders, please contact our Technical Team - Technicalinvestments@fpiom.com - for assistance.

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Appendix 1 – Investor Status

To assist with client classification, FPIL's definitions of retail and non-retail investors are:

Retail investor:

A retail investor is one who is not a non-retail (Qualified/Professional) Investor.

Non-retail investor (qualified/professional):

1. A government, governmental institutions and authorities, or the companies fully owned by any of the aforementioned.

2. International bodies and organizations.

3. A person or entity licensed to engage in a commercial business, provided that one of the purposes of its business is managing investments, including:

    a. A person, body corporate, partnership, trust or other unincorporated association whose ordinary business or professional activity includes acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent or giving advice about investments;

    b. Any director or partner of or consultant to a person referred to in paragraph (a);

    c. A functionary to a professional investment vehicle or an associate of a functionary to a professional investment vehicle;

    d. An employee, director or shareholder of or consultant to a person in (c) who is acquiring the investment as part of his remuneration or an incentive arrangement or by way of co-investment;

    e. A trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs (c) or (d);

    f. A trustee or operator of any employment benefit or executive incentive scheme or trust established for the benefit of persons referred to in paragraphs (c) or (d) or their dependents;

    g. A government, local authority, public authority or supra-national body in the Isle of Man or elsewhere.

4. A natural person who declares that their annual income is not less than £250,000, or their net equity, with the exception of their main home, exceeds £1,000,000.

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