**Part IV Permissions (Insurance Distribution)**

The following document is aimed at giving clarity to some of the regulatory permissions that insurance brokers hold or may be considering. Please contact a member of the Cobra Network Compliance team if you feel we have omitted information on an activity that may apply to your firm.

Ultimately firms will need to decide for themselves what permissions they need, taking legal advice as necessary. However, individual queries can be addressed to firm.queries@fca.org.uk or queries can be talked through with a member of the Cobra Network Compliance team.

## Advising on investments (except on Pension Transfers and Pension Opt Outs)

(Advising on Investments) makes advising on contracts of insurance a regulated activity. This covers advice which is both:

(1) given to a person in his capacity as an insured or potential insured, or as agent for an insured or a potential insured; and

(2) advice on the merits of the insured or his agent:

(a) Buying, selling, subscribing for or underwriting a particular contract of insurance; or

(b) exercising any right conferred by a contract of insurance to buy sell, subscribe, subscribe for or underwrite a contract of insurance.

For advice to fall within article 53, it must:

(1) relate to a particular contract of insurance (that is, one that a person may enter into);

(2) be given to a person in his capacity as an investor or potential investor;

(3) be advice (that is, not just information); and

(4) relate to the merits of a person buying, selling, subscribing for or underwriting (or exercising any right to do so) a contract of insurance or rights to or interests in life policies.

Where an activity is identified as not amounting to advising on an investment it could still form part of another regulated activity, This will depend upon whether a Person’s activities, viewed as a whole, amount to arranging. Additionally, it should be borne in mind that the provision of advice or information may involve the communication of a financial promotion.

## Arranging (bringing about) deals in investments

In the FCA’s view, a person would bring about a contract of insurance if their involvement in the chain of events leading to the contract of insurance was important enough that, without it, there would be no policy.

## Assisting in the administration and performance of a contract of insurance

This relates, in broad terms, to activities carried on by intermediaries after the conclusion of a contract of insurance and for or on behalf of policyholders, in particular in the event of a claim.

Loss assessors acting on behalf of policy holders in the event of a claim are, therefore, likely in many cases to be carrying on this regulated activity. By contrast, claims management on behalf of certain insurers is not a regulated activity

In the FCA’s view, an example of when a person may be assisting in the performance of a contract is where a person fills in the whole or a significant part of a claims form on behalf of a claimant. This is because, by helping complete a claims form, a person may be assisting the policy holder to perform his contractual obligation to notify the insurance undertaking in the event of a claim and provide details of the claim in the manner and form required by the contract.

Put another way, where an intermediary's assistance in filling in a claims form is material to whether performance takes place of the contractual obligation to notify claims, it is more likely to amount to assisting in the administration and performance of a contract of insurance.

Conversely, in the FCA’s view, a person who merely gives pointers about how to fill in the claims form or merely supplies information in support of a claim will not be assisting in the performance of a contract of insurance. Instead, the person will only be facilitating rather than assisting in the performance of a contract of insurance.

More generally, an example of an activity that, in the FCA’s view, is likely to amount to assisting a policyholder in both the administration and the performance of a Contract of Insurance is, notifying a claim under a policy and then providing evidence in support of the claim, or helping negotiate its settlement on the policy holder’s behalf. Notifying an Insurer of a claim assists the policy holder in discharging his contractual obligation to do so (assisting in the performance); providing evidence in support of the claim or negotiating its settlement assists management of the claim (assisting in the administration).

## Dealing in investments as agent

Dealing in investments as agent makes dealing in Contracts of Insurance as agent a Regulated Activity. The activity is defined in terms of buying and selling, subscribing for or underwriting contracts as agent, that is, on behalf of another. Examples include:

(1) where an intermediary, by accepting on the insurance undertaking’s behalf to provide the insurance, commits an insurance undertaking to provide insurance for a prospective policyholder; or

(2) Where the intermediary agrees, on behalf of a prospective policy holder, to buy an insurance policy.

Intermediaries with delegated authority to bind insurance undertakings are likely to be dealing in investments as agent. It should be noted, in particular, that this is a regulated activity:

1. whether or not any advice is given and
2. whether or not the intermediary deals through an authorised person (for example, where he instructs another agent who is an authorized person to enter into a contract of insurance on his client’s behalf).

## Making arrangements with a view to transactions in investments

This may include activities of persons who help potential policy holders fill in or check application forms in the context of ongoing arrangements between these persons and the insurance undertaking.

A further example of this activity would be a person introducing customers to an intermediary either for advice or to help arrange an insurance policy. The introduction might be oral or written. By contrast, the FCA considers that a mere passive display of literature advertising insurance (for example, leaving leaflets advertising insurance in a dentist's or vet's waiting room and doing no more) would not amount to making arrangements with a view to transactions in investments.