
Solicitors' Code of Conduct 2007

Rule 19: Financial services

Guidance notes 2–4 to rule 19 of the Code of Conduct were amended on 31 March 2009 as part of a general updating of the rules to introduce firm-based regulation and legal disciplinary practices as provided for in the Legal Services Act 2007.

Introduction

This rule sets out the requirements for ensuring that your independence is preserved when acting in connection with the provision of financial services for clients, both through your firm and through a separate business.

The rule applies to your overseas practice in relation to regulated activities you conduct from an office in Scotland or Northern Ireland and to regulated activities you conduct into the UK from an office outside the UK.

Rule

19.01 Independence

- (1) You must not, in connection with any regulated activity:
 - (a) be an appointed representative; or
 - (b) have any arrangement with other persons under which you could be constrained to recommend to clients or effect for them (or refrain from doing so) transactions:
 - (i) in some investments but not others;
 - (ii) with some persons but not others; or
 - (iii) through the agency of some persons but not others; or
 - (c) have any arrangement with other persons under which you could be constrained to introduce or refer clients or other persons with whom you deal to some persons but not others.
- (2) You must not have any active involvement in a separate business which is an appointed representative, unless it is the appointed representative of an independent financial adviser.
- (3) Paragraph (1)(b) and (c) above shall not apply to arrangements in connection with any of the following types of investments:
 - (a) regulated mortgage contracts;
 - (b) general insurance contracts; or
 - (c) pure protection contracts.
- (4) In this rule:
 - (a) "*appointed representative*" has the meaning given in the Financial Services and Markets Act 2000;
 - (b) "*general insurance contract*" is any contract of insurance within Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);
 - (c) "*investment*" means any of the investments specified in Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);

- (d) "*pure protection contract*" has the meaning given in rule 8(1) of the Solicitors' Financial Services (Scope) Rules 2001;
- (e) "*regulated activity*" means an activity which is specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544); and
- (f) "*regulated mortgage contract*" has the meaning given by article 61(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/ 544).

Guidance to rule 19 — Financial services

1. Independence is a core duty (1.03). However rule 19 sets out the exact scope of this duty when carrying on regulated activities.
2. Note that under the Financial Services and Markets Act 2000 the Financial Services Authority (FSA) is the single statutory regulator of financial services business. Under the Financial Services and Markets Act 2000, if you carry on "regulated activities" you will need either to be regulated by the FSA or to rely on the Part XX exemption.
3. The SRA is not therefore able to authorise you to conduct investment business. However, Part XX of the Financial Services and Markets Act 2000 makes special provision for professional firms which do not carry on mainstream investment business but which may carry on regulated activities in the course of other work such as conveyancing, corporate, matrimonial, probate and trust work. Part XX enables firms regulated by the SRA which meet certain conditions to be treated as exempt professional firms and to carry on activities known as exempt regulated activities. These firms will not need to be regulated by the FSA but will be able to carry on exempt regulated activities under the supervision of and regulation by the SRA. This exemption does not apply to an authorised non-SRA firm simply by virtue of that firm having a solicitor as a manager, owner or employee. If you are a solicitor practising in an authorised non-SRA firm, neither you nor the firm will be exempt under Part XX simply because you are a solicitor. However, the firm may benefit from an exemption relating to its own regulator under Part XX.
4. In carrying out the functions of a designated professional body, the SRA is required to make rules governing the carrying on of regulated activities by its members. In accordance with this requirement, the Solicitors' Financial Services (Scope) Rules 2001 set out the scope of the activities which may be undertaken by firms under the Part XX exemption in the Financial Services and Markets Act 2000. You should refer to these rules and the Solicitors' Financial Services (Conduct of Business) Rules 2001 regarding the carrying on of regulated activities.
5. This rule applies specifically in connection with regulated activities. It prohibits you from being an appointed representative (i.e. a tied agent) or from being actively involved in a separate business which is an appointed representative unless the separate business is the appointed representative of an independent financial adviser.
6. It also prevents you from entering into any restrictive arrangements in connection with regulated activities that could constrain the advice you give to clients or the referrals that you make. However, it would not prevent you from regularly introducing clients to a particular broker, provided that you have not entered into any arrangement which could constrain you to use that broker.
7. The prohibition on entering into restrictive arrangements does not apply to arrangements in connection with:
 - (a) regulated mortgage contracts;
 - (b) general insurance contracts, for example after the event insurance; or
 - (c) pure protection contracts, for example term assurance.

This means that you would not be prevented from having an arrangement under which an introducer stipulates that you might only sell one particular insurance policy — for example, if there is a conditional fee agreement, provided that it is suitable for the client's needs and you have informed the client of the constraint. Although the prohibition in rule 19 does not apply to arrangements in connection with particular types of investments, you must still comply with 1.03 (Independence) and rule 9 (Referrals of business).