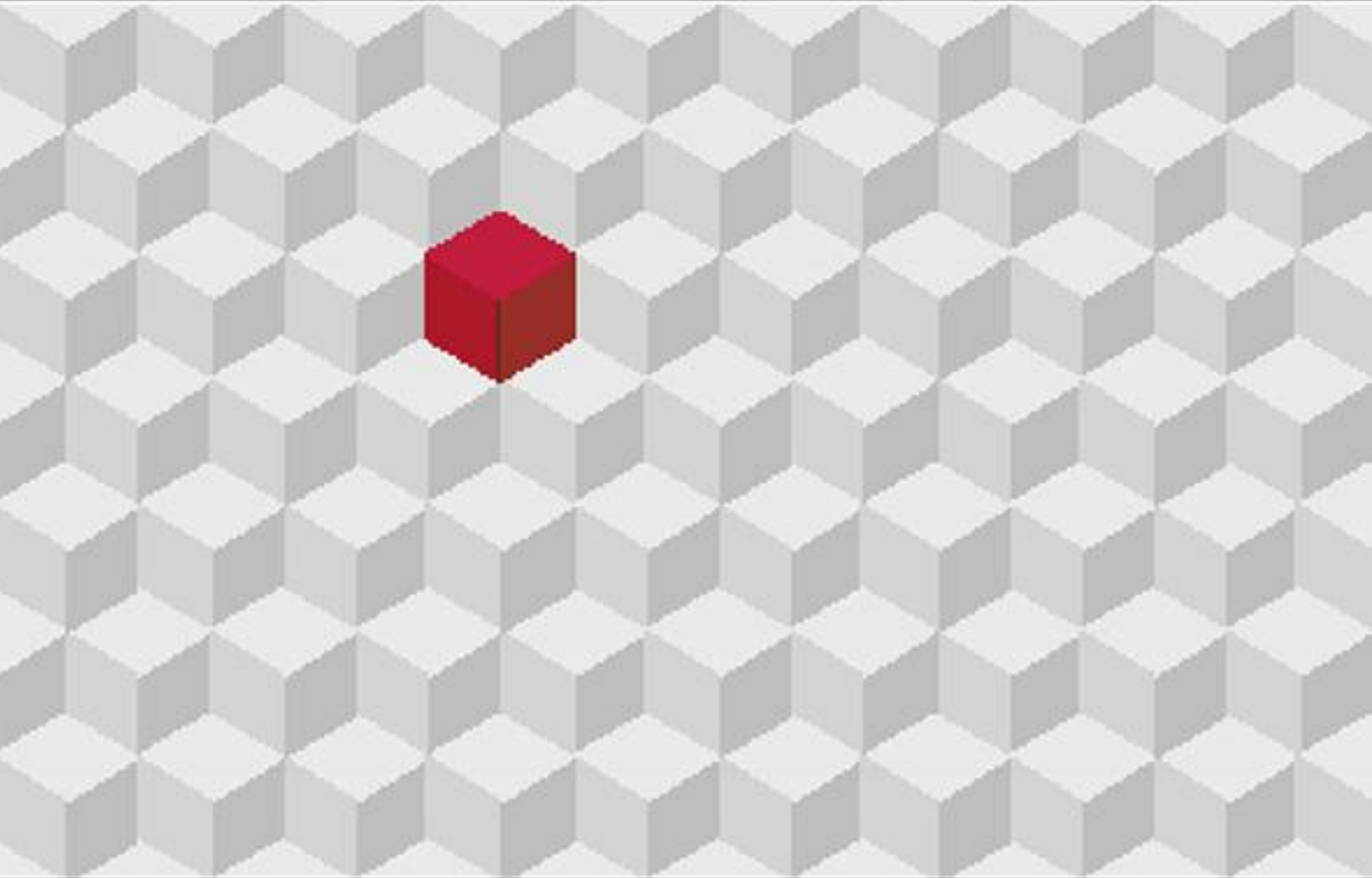


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LMA Guidance for Managing Agents

PS25/21: Simplifying the Insurance Rules

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This guidance has been designed for Lloyd’s managing agents and is intended to highlight updates to the applicable FCA rules arising from PS25/21: Simplifying the insurance rules.

Managing agents should refer to the relevant Financial Conduct Authority (FCA) Handbook, Policy Statements, Guidance and other relevant documentation when applying the relevant rules.

Whilst this document has been shared with the FCA, the final interpretation of FCA rules is fact specific. The LMA therefore does not accept liability for the firm’s final interpretation of the rules.

Background

The Lloyd’s Market Association (LMA) has been lobbying the FCA since 2021 to unwind some of the significant burdens placed on commercial business following the pricing practices Market Study. The changes in regulation were based on findings in retail home and motor business but then implemented across all general insurance business. As a result, the changes were generally disproportionate when applied to business written within the London market.

In 2023, the LMA started working more closely with the FCA to develop strategies which would remove some of this regulatory burden from the Lloyd’s market and wider commercial general insurance business. This work is still ongoing with further formal consultation by the FCA already committed to. However, the FCA has already published its first policy statement, [PS25/21](#), which begins the process of applying a more proportionate regime to our market. While this does not deliver all the changes we had called for, and maintains the complexity of the rules overall, there are opportunities within the rule changes to reduce the burden on firms.

The intent of PS25/21 is to move traditional London market business, or what the FCA would term wholesale business, out of the more granular rules which are better suited to large books of homogenous policies, such as home, motor, travel and pet or products aimed at small businesses and tradespeople.

By applying these changes, firms will be able to remove some products from product governance processes and concentrate their conduct risk resources on products which pose the greatest risk of harm to customers.

It should be noted that the high-level rules, such as Customers Best Interest, the Principles (Save for Principle 12) and all individual conduct rules, will continue to apply with respect to all firms and their general insurance business, irrespective of the customer type.

Through its policy statement, the FCA has set out to:

| | |
|---|---|
| Proportionality based on customer type and size | Recognise that a one-size-fits-all approach to rules is inappropriate for some business and markets. Recognising that consumers and smaller businesses have different needs to larger commercial customers, the FCA intends that these changes align the majority of granular rules in PRIN2A, PROD 4 and ICOBS with eligibility for the Financial Ombudsman. |
| Widen the scope of the Bespoke exemption | Reduce the burden of product oversight and governance by explicitly extending the exemption to insurers and give greater opportunity to tailor-make products for individual customers. |
| Flexibility of accountability and the role of the leader | Reduce duplication of work by giving firms the opportunity to appoint a lead insurer to be accountable for the regulatory requirements on subscription market business. |
| Reduce review frequency for low-risk products | Allow a more risk-based approach to product oversight and governance schedules. Lower risk products no longer require an annual review cycle of product governance, while high-risk products should continue to be reviewed more regularly. |

Application of insurance rules

The SME watershed

A key limb to this work is what type of customer should the rules apply to. The FCA has set out two separate tests relating to this question:

- The Financial Ombudsman Eligibility Criteria contained with DISP 2.7.
- An assumption that all customers are within scope unless excluded through the new “larger commercial customer” and “specialist risks” contracts definitions.

The FCA stated in PS25/21 that “larger commercial customers” are

*... commercial customers of any general insurance product who exceed the thresholds **which we have aligned with DISP**, with the change highlighted above relating to the ‘policyholder making arrangements’ being reflected here as well.*

It also clarifies that the approach to “specialist risk contracts”, i.e. marine, aviation, transport and credit, are intended to align with the existing contracts of large risks exemptions,

in line with existing product-specific categories, these are contracts of insurance covering railway rolling stock, aircraft, ships, goods in transit, aircraft liability and liability of ships. They also include contracts of insurance covering credit and suretyship where the policyholder is engaged in certain specified activities.

While the larger commercial customers definition remains highly complex and based on an exemption rather than specifically defining a consumer, a logical analysis and discussions with the FCA confirming this, allows firms to apply the eligible complainant test in a way that derives the same outcome, i.e. application of DISP 2.7, as the standard test should derive the same regulatory outcomes as those set out for “larger commercial customers”.

The high level and relevant tests to establish an eligible complainant within DISP 2.7 are set out below.

Consumers

It should be assumed that individuals purchasing products for their own use outside of their trade, business or profession will automatically be a retail customer/consumer.

Small businesses

Has an annual turnover of less than £6.5 million; and

- employs less than 50 people; or
- has a balance sheet of less than £5 million (or equivalent in any other currency).

Firms are already required to assess if customers are eligible complainants for the purposes of complaints reporting purposes. Therefore, firms already collect appropriate data or proxies to derive this information.

Policy stakeholders and group policies

The multi-occupancy buildings insurance policy PS23/14 changes brought all potential beneficiaries of policies within scope of PROD 4. The FCA has sought to remedy the unintended consequence of this, for example, small subcontractors bringing specialty products within the scope of Consumer Duty and PROD. The FCA has therefore:

- maintained the concept of policy stakeholder within the wider handbook to protect leaseholders or similar; and
- for commercial business aimed at corporate groups or multinationals, reintroduced the SME watershed test (for all but ICOBS 2) being based on the main policyholder who made the arrangements.

Policy stakeholders

A natural person (excluding a policyholder) who is under a contractual or statutory obligation, which does not arise solely from that person’s trade or profession, to pay an amount:

1. relating to:
 - a. the premium; and
 - b. any other costs connected to the distribution,
 of a non-investment insurance contract; and
2. where the obligation arises in relation to the person having an interest and/or benefit in the subject matter of the insurance.

Making arrangements

For ICOBS (other than ICOBS 2) a policyholder or a prospective policyholder who makes/made the arrangements preparatory to them concluding the contract of insurance (directly or through an agent).

A larger commercial customer is a commercial customer that meets the SME watershed size thresholds. For the purposes of the application provisions in ICOBS, those size thresholds only need to be applied to the policyholder involved in making the arrangements preparatory to them concluding the contract of insurance.

Bespoke policies

As outlined in the policy statement by the FCA, it is expected that traditional open market business will generally benefit from either (or both) the SME watershed or bespoke exemption. Firms will generally be able to determine whether the SME watershed is applicable first before having to consider if the bespoke exemption is relevant.

In many circumstances business that could be “bespoke” will be agreed with a customer which is already excluded from product governance requirements by the SME watershed. Discussions with some members has highlighted that 95%+ of their open market business would already be out of scope due to customer type and business size. i.e. the intended target market for all open market business is above the SME watershed and therefore bespoke should be the secondary test.

However, this does not preclude a small number of individuals or small business customers from approaching insurers through their broker to negotiate a tailor-made product specific to their demands and needs.

Within the Lloyd’s and London market there is not normally “direct access” for customers save by the largest corporates. This business will therefore be placed through an independent broker or chain of brokers, ensuring that the customer can receive appropriate advice about their tailor-made products and demands and needs (subject to ICOBS 5).

This broker-led approach to placements mitigates the product governance risk to customers, as the product should always be consistent with the individual requirements of the individual customer even if no advice is provided.

Examples where this bespoke business may arise outside of the SME watershed:

- Individuals with complex demands and needs or wishing to cover a high-risk circumstance or event;
- High net worth individuals who wish to buy tailor-made insurances for their personal property, event contingency or travel risks outside of a trust, offshore business or similar structure; and
- Small, start-up, high tech or high-risk business whose needs cannot be met through a standard all risks commercial combined or professional liability product.

| Indicator of a bespoke contract | Relevant considerations |
|---------------------------------|---|
| Open market business | Offered on a procurement/open tender basis to and placed with any managing agent or insurer that is willing to underwrite the terms demanded and needed by the customer. |
| Broker or customer led | Each risk is presented individually by the broker/customer to however many insurers are required to fully underwrite the risk. |
| Single risk on slip | The broker uses the Market Reform Contract template (or similar) as a basis for negotiating and agreeing an individual contract of insurance (e.g. not contracts attaching to a binder or line slip of homogenous business below the SME watershed). |

Applicability of the exemption

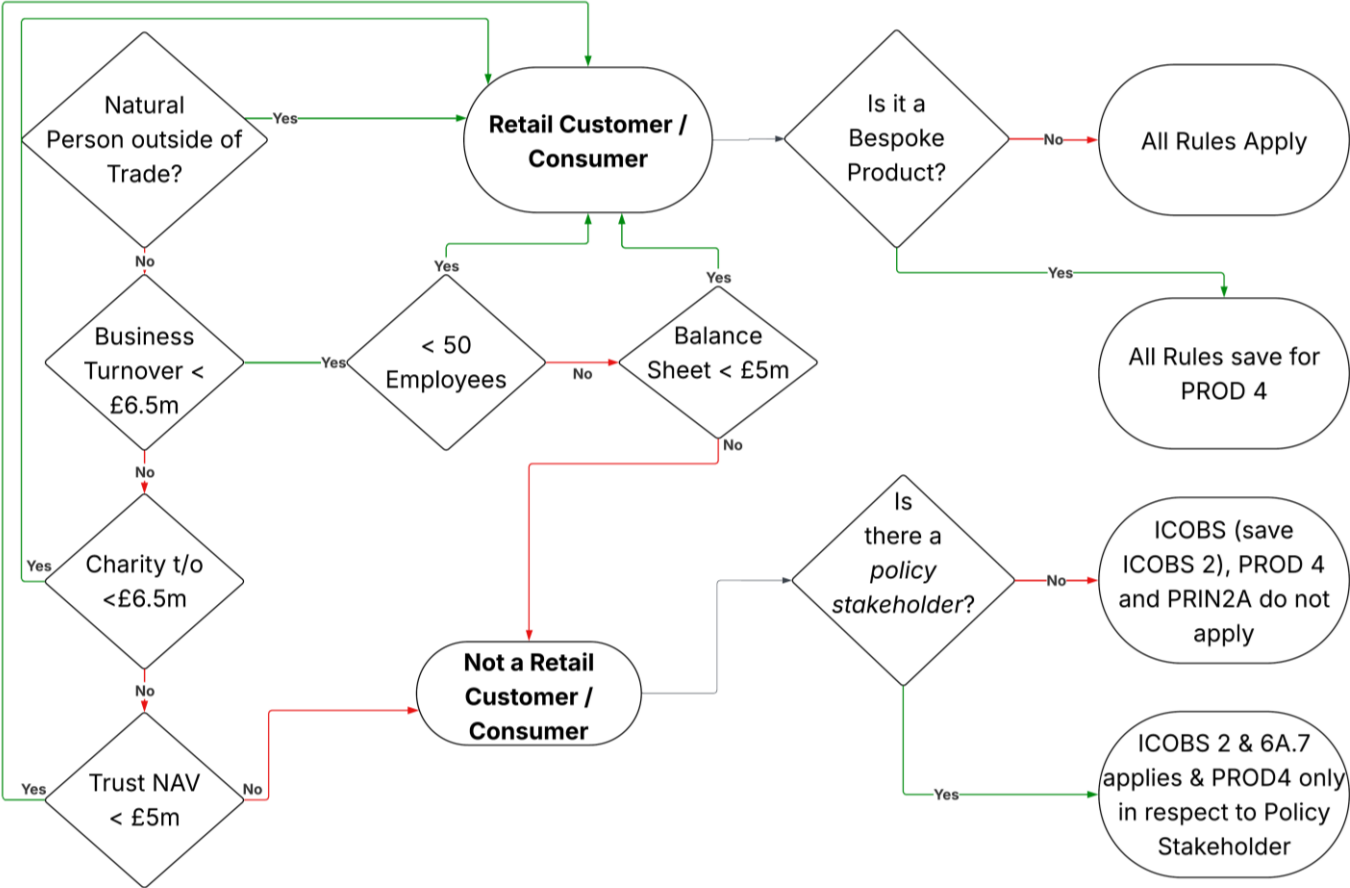
The fact that a tailor-made or individually negotiated contract **could** meet the needs of more than one customer below the SME watershed does not make it a product within PROD 4.

It is important to note that unlike the SME watershed, the bespoke exemption is only relevant to the application of PROD 4 requirements – Consumer Duty (save product governance and fair value) and ICOBS Customers Best Interest continue to apply in full to bespoke business.

Example decision trees

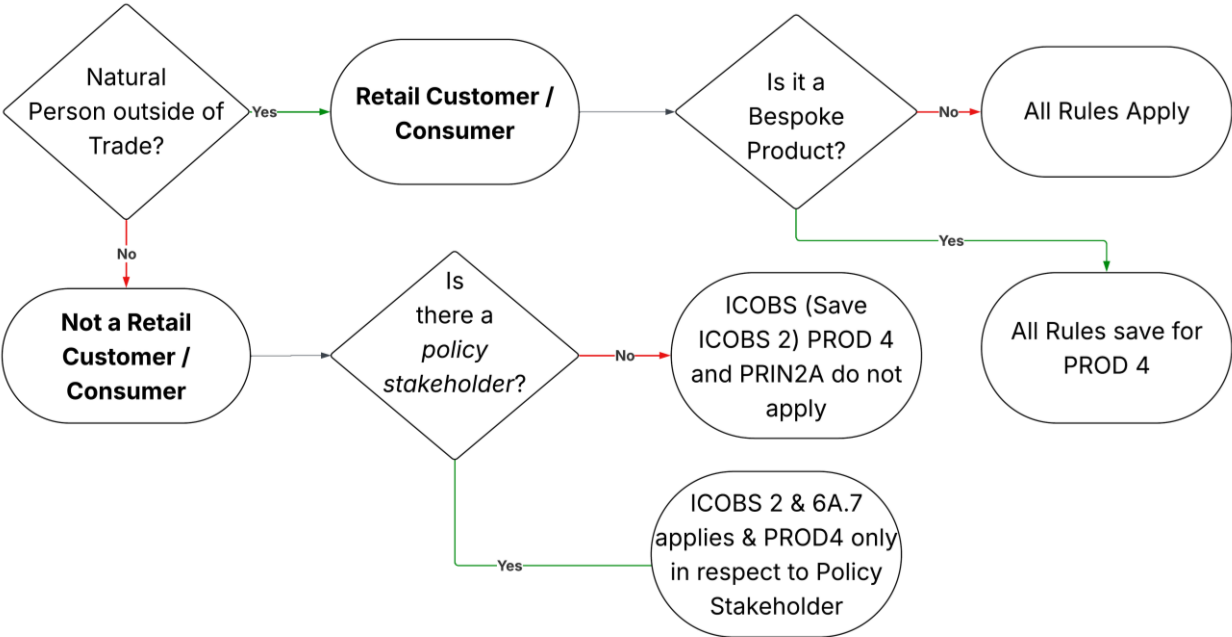
The FCA has stated that firms are free to design their own on-boarding processes for products if they deliver the appropriate outcomes. Example decision trees that could be used are set out below:

Non-specialist risks



Specialist risks (MAT exemption)

For MAT risks (marine, aviation, transport and credit), the decision tree can be further simplified:



The role of the lead underwriter

The role of the leader in product governance

In 2026, the FCA has given the option for the lead underwriter/insurer to be solely responsible for compliance with manufacturer obligations. Single insurance contracts would most likely fall outside of the SME watershed or bespoke exemption, putting them outside the scope of PROD 4.

Where business written by members that is still within the scope of PROD 4, then under the pre-existing rules, all insurers were jointly and severally accountable as manufacturer, even if they were a follow market. A significant amount of the duplication within the London market is therefore due to multiple firms carrying out the same product governance work or re-checking the work done by other firms within the chain.

The ability for lead underwriters to take accountability is therefore most useful for binders, line slips and consortia written on a subscription lead/follow basis. We understand that in such situations, the lead is often already designated as the manufacturer using the existing LMA5312B clause.

The assumption of the lead underwriter role, allowing the follow to fully contract out of PROD 4, is conditional on three factors:

- The lead underwriter must be an insurer or Lloyd's managing agent and cannot be an intermediary (for example, a coverholder/MGA).
- The firm nominated as lead must be sufficiently involved in the "manufacturing" of the product and not just be lead in name only.
- There must be a written contract between the parties which:
 - Makes the lead firm solely and unambiguously responsible for compliance with PROD 4.2.
 - The lead firm assumes any and all liability arising out of any breaches of the requirements in PROD 4.2.
 - The non-lead firms will co-operate with the lead firm in a timely manner and support the lead where appropriate to meet the requirement of PROD 4.2.

In the absence of an effective endorsement or other contractual agreement, the previous rules, making all manufacturers jointly and severally liable, will prevail.

The LMA5312B clause currently does not fully meet these requirements. The LMA proposes developing a new endorsement to the LMA model Binding Authority Agreement to account for this.

Further outsourcing

Based on the second bullet point that firms must be "sufficiently involved," it is implicit that firms accepting the "lead underwriter" role can still outsource some of the activities, but it is not possible for the "lead underwriter" to contract out of the responsibility for that outsourced activity.

This outsourcing arrangement would not prevent the lead underwriter from securing contractual indemnities or seeking redress from their outsourcing partners (for example, a coverholder or MGA) in the event of an error or omission.

Frequency of product reviews

Applying proportionality to review frequency

The FCA has removed the requirement for all products to be reviewed at least annually. This is a significant step and allows for a more proportionate approach to review timing.

Firms are expected to proactively decide when their products should be regularly reviewed. The implication being that high-risk products should be reviewed most frequently, and potentially more frequently than annually. On the other hand, low-risk products with stable outcomes can be reviewed less frequently, perhaps every two to three years.

When setting their risk appetite for review frequency, a firm's framework must consider at least the following:

- the nature of the customer base, including whether there are significant numbers of customers of long tenure and/or vulnerable customers;
- any indicators of customer harm seen in the firm's previous assessment of the product's value to the customer; and
- any indicators of customer harm potentially emerging from the current performance of the product (for example, through claims and complaints data).

The firm must also make and retain a record of:

- its decision of the appropriate intervals for regular review; and
- the reasons for that conclusion.

This record would not necessarily need to be a stand-alone document. This record could be part of the wider product catalogue process or be included in the fair value assessment template itself.

The requirement to conduct a review and approval process due to significant adaptation or change remains. Other factors which may be relevant to frequency or could trigger an interim review may include:

- changes to distribution channels and partners previously selected
- what is a reasonable foreseeable period when considering the characteristics of the target market
- regulatory, legal and technological developments which may impact the product
- changes in market profile or dynamics.

The outcomes of high, medium and low risk is likely to have an element of subjectivity, but it should be expected that intermediated commercial lines products are generally lower risk than non-advised retail lines business.

Proportionate approach to product governance

Firms should also take into account the existing guidance in PROD 4.2.3 and 4.2.36, when considering a proportionate and appropriate approach to the product approval and review process for products still in scope of PROD 4. The factors you should be considering are:

- the complexity of the insurance product;
- the degree to which publicly available information can be obtained;
- the nature of the insurance product and the risk of consumer detriment related to it;
- the characteristics of the target market; and
- the scale and complexity of the relevant business of the manufacturer or distributor.

Other factors to be considered are the distribution channels used, duration of the contracts and external market developments (for example, legal changes, technology and economic).

It may be appropriate to consider the approach taken to high-, medium- and low-risk products. For example, firms may also wish to consider the levels of delegation or seniority of committee appropriate for approval of high-, medium- and low-risk products.

Bringing reviews forward

It is important to note that the FCA expects this to be monitored on an ongoing basis and that the scope of Consumer Duty will also be relevant. Even where a firm had determined that a product is low risk, the FCA will expect reviews to be brought forward for a significant adaptation or should a firm become aware of any crystallised harm to customers.

It is therefore an important expectation that the manufacturer maintains appropriate management information, data and/or dashboards to help identify customer harm as it arises. A key trigger could be a change in the number or complaints received in a given period.

A secondary trigger may be the broker's (distributor) duty to inform the insurer (manufacturer) that a product is not performing as expected or is resulting in unforeseeable harms.

