

**Conduct of Business Sourcebook**

# Chapter 1

# Application

## 1.1 General application

### Designated investment business and long-term insurance business in relation to life policies

**1.1.1** **R** This sourcebook applies to a *firm* with respect to the following activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*:

- (1) [deleted]
- (2) *designated investment business*;
- (3) *long-term insurance business in relation to life policies*;

and activities connected with them.

### Deposits (including structured deposits)

**1.1.1A** **R** This sourcebook applies to a *firm* with respect to activities carried on in relation to *deposits* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom* only as follows:

	Section / chapter	Application in relation to deposits
(1)	Rules in this sourcebook which implemented articles 24, 25, 26, 28 and 30 of <i>MiFID</i> (and related provisions of the <i>MiFID Delegated Directive</i> ) (see COBS 1.1.1ADG).	A <i>MiFID investment firm</i> , a <i>third country investment firm</i> and a <i>MiFID optional exemption firm</i> when selling, or advising a <i>client</i> in relation to, a <i>structured deposit</i> .
(2)	COBS 4.6 (Past, simulated past and future performance)	<i>Communication</i> or <i>approval</i> of a <i>financial promotion</i> relating to a <i>structured deposit</i> that is addressed to, or disseminated in such a way that it is likely to be received by, a <i>retail client</i> .
(3)	COBS 4.7 (Direct offer financial promotions)	<i>Communication</i> or <i>approval</i> of a <i>financial promotion</i> relating to a <i>cash deposit ISA</i> , <i>cash-only lifetime ISA</i> or <i>cash deposit CTF</i> that is addressed to, or disseminated in such a way that it is likely to be received by, a <i>retail client</i> .

(4)	COBS 4.10 Approving and confirming compliance of financial promotions)	To the extent that other rules in COBS 4 apply.
(5)	COBS 13 (Preparing product information)	Producing a <i>cash-deposit ISA</i> , <i>cash-only lifetime ISA</i> or <i>cash-deposit CTF</i> .
(6)	COBS 14 (Providing product information to clients)	<i>Selling, personally recommending or arranging the sale of a cash-deposit ISA, cash-only lifetime ISA or cash-deposit CTF to a retail client.</i>
(7)	COBS 15 (Cancellation)	A cancellable contract between a consumer and a firm.

**Structured deposits: further provisions**

**1.1.1AA** **R** Except in ■ COBS 6.2B, in the rules referred to in ■ COBS 1.1.1AR(1) (and in any related guidance), references to:

- (1) investment services and designated investment business include selling, or advising clients in relation to, structured deposits; and
- (2) financial instruments and designated investments include structured deposits.

**1.1.1AB** **UK** Article 1(2) of the MiFID Org Regulation specifies how its provisions should be read where they apply to firms selling, or advising on, structured deposits.

1(2)References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements (so far as relevant) in Chapters II to IV of this Regulation.

**1.1.1AC** **R** A third country investment firm and a MiFID optional exemption firm must also comply with the provisions of the MiFID Org Regulation which relate to the rules which implemented the articles of MiFID referred to in ■ COBS 1.1.1AR(1), as modified by article 1(2) of the MiFID Org Regulation, when selling, or advising a client in relation to, a structured deposit.

**1.1.1AD** **G** The rules which implemented the provisions of MiFID and the MiFID Delegated Directive referred to in ■ COBS 1.1.1AR(1) can be found in the chapters of COBS in the following table and are followed by a 'Note':

COBS chapter	Description
COBS 2	Conduct of business obligations
COBS 3	Client categorisation
COBS 4	Communicating with clients, including financial promotions
COBS 6	Information about the firm, its services and remuneration
COBS 8A	Client agreements
COBS 9A	Suitability (MiFID provisions)

COBS 10A	Appropriateness (for non-advised services) (MiFID provisions)
COBS 11	Dealing and managing
COBS 14	Providing product information to clients
COBS 16A	Reporting information to clients (MiFID provisions)

[Note: article 1(4) of MiFID]

### Electronic money

- 1.1.1B **R** ■ COBS 4.4.3 R, ■ COBS 5 (Distance communications), ■ COBS 15.2 (The right to cancel), ■ COBS 15.3 (Exercising a right to cancel), ■ COBS 15.4 (Effects of cancellation) and ■ COBS 15 Annex 1 (Exemptions from the right to cancel) apply to a *firm* with respect to the activity of *issuing electronic money* as set out in those provisions.

### Application to TP firms and Gibraltar-based firms

- 1.1.1C **R** In addition to the application rules in COBS as relevant, *TP firms* and Gibraltar-based firms carrying on business from an establishment in the *United Kingdom* must also comply with the provisions in:

- (1) ■ COBS 16.6.7AR (drawdown pensions: annual statements) and ■ COBS 16.6.8R to ■ COBS 16.6.13G (income withdrawals – annual statements);
- (2) ■ COBS 19.10 (Drawdown, investment pathways and cash warnings).
- (3) ■ COBS TP 2 paragraphs 2.8G to 2.8J (Other Transitional Provisions)

- 1.1.1D **G** Unless the contrary intention appears, a reference to Gibraltar-based firm in ■ COBS 1.1.1CR has the same meaning as in the *Gibraltar Order*.

### Auction regulation bidding

- 1.1.1E **R** ■ COBS 5 (Distance communications) applies to a *firm* in relation to its carrying on of *auction regulation bidding*.

- 1.1.1C **R** [deleted]

### Modifications to the general application rule

- 1.1.2 **R** The application of this sourcebook is modified in ■ COBS 1 Annex 1 according to the activities of a *firm* (Part 1) and its location (Part 2).

- 1.1.3 **R** The application of this sourcebook is also modified in the chapters to this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

**Guidance**

- 1.1.4 **G** *Guidance* on the application provisions is in ■ COBS 1 Annex 1 (Part 3).
  
- 1.1.5 **G** ■ PERG 13 contains general *guidance* on the *persons* and businesses to which the *UK* provisions which implemented *MiFID* apply.
  
- 1.1.6 **G** ■ PERG 16 contains general *guidance* on the businesses to which the *UK* provisions which implemented *AIFMD* apply. ■ FUND 1 contains *guidance* on the types of *AIFM*.

## 1.2 Markets in Financial Instruments Directive

### References in COBS to the MiFID Org Regulation

- 1.2.1** G
- (1) This sourcebook contains a number of provisions which transposed *MiFID*. A rule transposed a provision of *MiFID* if it is followed by a 'Note:' indicating the article of *MiFID* or the *MiFID Delegated Directive* which it transposed.
- (2) In order to help *firms* which are subject to those requirements which implemented *MiFID* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the *MiFID Org Regulation*, marked with the status letters "UK".
- (3) This sourcebook does not reproduce the *MiFID Org Regulation* in its entirety. A *firm* to which provisions of the *MiFID Org Regulation* applies should refer to Commission Delegated Regulation (EU) 2017/565 as published in the electronic version of the Official Journal of the European Union and as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.
- 1.2.2** G
- (1) In some cases, this sourcebook applies provisions of the *MiFID Org Regulation* to *firms* in relation to business other than their *MiFID business* as if those provisions were *rules*.
- (2) *Third country investment firms* should also have regard to the rule in ■ [GEN 2.2.22AR](#) which concerns the application of the *MiFID Org Regulation* to such *firms*.
- 1.2.3** R
- (1) Where this sourcebook, or the rule in ■ [GEN 2.2.22AR](#), applies provisions of the *MiFID Org Regulation* as if they were *rules*, (2) applies to enable *firms* to correctly interpret and understand the application of those provisions.
- (2) In this sourcebook, a word or phrase found in a provision marked "UK" and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
"ancillary services"	<i>ancillary service</i>
"client" and "potential client"	<i>client</i>
"competent authority"	<i>FCA</i>

"conditions specified in Article 3(2)"	<i>website conditions</i>
"derivative"	those <i>financial instruments</i> referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the <i>Regulated Activities Order</i>
"Directive 2009/65/EC"	<i>UCITS Directive</i>
"Directive 2014/65/EU"	<i>MiFID</i>
"distributing units in collective investment undertakings"	distributing units in a <i>UCITS</i>
"durable medium"	<i>durable medium</i>
"eligible counterparty"	<i>eligible counterparty</i>
"financial analyst"	<i>financial analyst</i>
"financial instrument"	<i>financial instrument</i> and (if the context requires) <i>designated investment</i> and <i>structured deposit</i>
"funds"	<i>client money</i> that a <i>firm</i> receives or holds for, or on behalf of, a <i>client</i> in the course of, or in connection with, its <i>MiFID business</i> and (if the context requires) its <i>equivalent business of a third country investment firm</i> .
"group"	as defined in section 421 of the <i>Act</i>
"investments"	<i>financial instrument</i> and (if the context requires) <i>designated investment</i> and <i>structured deposit</i>
"investment advice"	<i>personal recommendation</i>
"investment firm" and "firm"	<i>firm</i>
"investment research"	<i>investment research</i>
"investment service" and "investment services and activities"	<i>investment service</i> and <i>investment services and/or activities</i> or (if the context requires) <i>designated investment business</i>
"market maker"	<i>market maker</i>
"periodic statement"	<i>periodic statement</i>
"PRIIPs KID"	<i>key information document</i>
"portfolio management" and "portfolio management service"	<i>portfolio management</i>
"professional client"	<i>professional client</i>
"professional client covered by Part 2 of Schedule 1 to Regulation (EU) No 600/2014"	<i>per se professional client</i>
"professional client in accordance with Part 3 of Schedule 1 to Regulation (EU) No 600/2014"	<i>elective professional client</i>
"Regulation (EU) No. 1286/2014"	<i>PRIIPs Regulation</i>
"relevant person"	<i>relevant person</i>
"retail client"	<i>retail client</i>
"shall"	must

"tied agent"

*tied agent*

"UCITS KIID"

*key investor information  
document*

(3) In this sourcebook, where a reproduced provision of an article of the *MiFID Org Regulation* refers to another part of the *MiFID Org Regulation*, that other provision must also be read with reference to the table in (2).

1.2.4

G

*Firms* to which provisions of the *MiFID Org Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked "UK" to assist in interpreting any such references or cross-references.

### Interpretation – "in good time"

1.2.5

G

(1) Certain of the provisions in this sourcebook which implemented *MiFID* require *firms* to provide *clients* with information "in good time".

(2) In determining what constitutes the provision of information "in good time", a *firm* should take into account, having regard to the urgency of the situation, the *client's* need for sufficient time to read and understand the information before taking an investment decision.

(3) A *client* is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a *client* has no experience with, than a *client* considering a simpler or more familiar product or service, or where the *client* has relevant prior experience.

[Note: recital 83 of *MiFID*]

[Note: *ESMA* has issued a number of guidelines under article 16(3) of the *ESMA* Regulation in relation to certain aspects of *MiFID*. These include:

guidelines on certain aspects of the *MiFID* suitability requirements which also include guidelines on conduct of business obligations, 28 May 2018/ESMA35-43-869 (EN);

guidelines on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN); and

guidelines on complex debt instruments and *structured deposits*, 4 February 2016/ESMA/2015/1787 (EN)].





### 1.3 Insurance distribution

[deleted]

1.3.1 **G** [deleted]

1.3.2 **G** [deleted]

1.3.3 **R** [deleted]

1.3.4 **G** [deleted]

**Interpretation – “in good time”**

- 1.3.5 **G**
  - (1) Certain provisions in this sourcebook require *firms* to provide *clients* with information “in good time”, for example, ■ COBS 6.1ZA.19AR.
  - (2) In determining what constitutes the provision of information “in good time”, a *firm* should take into account, having regard to the urgency of the situation, the *client’s* need for sufficient time to read and understand the information before taking an investment decision.
  - (3) A *client* is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a *client* has no experience with, than a *client* considering a simpler or more familiar product or service, or where the *client* has relevant prior experience.



## Application (see COBS 1.1.2R)

### Part 1: What?

#### Modifications to the general application of COBS according to activities

<b>1.</b>	<b>Eligible counterparty business</b>																													
1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> except, where the <i>eligible counterparty business</i> is in scope of the <i>IDD</i> , those provisions which implemented the <i>IDD</i> continue to apply.																												
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		[Note: paragraphs 1 and 2 of article 30(1) of <i>MiFID</i> ]																												
<b>2.</b>	<b>Transactions between an MTF operator and its users</b>																													

2.1	R	The <i>COBS</i> provisions (applicable to <i>MiFID business</i> ) shown below do not apply to a transaction between an operator of an <i>MTF</i> and a member or participant in relation to the use of the <i>MTF</i> .																		
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COBS 14.3A	Information about financial instruments (MiFID provisions)																			
COBS 16A	Reporting information to clients (MiFID provisions)																			
		[Note: article 19(4) of <i>MiFID</i> ]																		
3.		<b>Transactions concluded on an MTF</b>																		
3.1	R	The <i>COBS</i> provisions in paragraph 2.1R do not apply to transactions concluded under the rules governing an <i>MTF</i> between members or participants of the <i>MTF</i> . However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on an <i>MTF</i> .																		
		[Note: article 19(4) of <i>MiFID</i> ]																		
3A.		<b>Operators of OTFs</b>																		
3A.1	G	A <i>firm</i> which operates an organised trading facility should refer to MAR 5A.3.9R which specifies how the provisions in this sourcebook apply to that activity.																		
4.		<b>Transactions concluded on a regulated market</b>																		
4.1	R	In relation to transactions concluded on a <i>regulated market</i> , members and participants of the <i>regulated market</i> are not required to apply to each other the <i>COBS</i> provisions in paragraph 2.1R. However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on a <i>regulated market</i> .																		
		[Note: article 53(4) of <i>MiFID</i> ]																		
5.		<b>Consumer credit products</b>																		
5.1	R	If a <i>firm</i> , in relation to its <i>MiFID business</i> , offers an <i>investment service</i> as part of a financial product that is subject to other provisions of EU-derived law related to <i>credit institutions</i> and consumer credits with respect to information requirements, that service is not subject to the <i>rules</i> in this sourcebook that implemented articles 24(3), (4) and (5) of <i>MiFID</i> .																		
		[Note: article 24(6) of <i>MiFID</i> ]																		
5.2	G	This exclusion for consumer credit products is intended to apply on a narrow basis in relation to cases in which the <i>investment service</i> is a part of another financial product. It does not apply where the <i>investment service</i> is the essential or leading part of the financial product. It also does not apply where the service provided is a combination of an <i>investment service</i> and an <i>ancillary service</i> (for example, granting a credit for the execution of an order where the credit is instrumental to the buying or the selling of a <i>financial instrument</i> .) The exclusion also does not apply in relation to the sale of a <i>financial instrument</i> for the pur																		

pose of enabling a *client* to invest money to repay his obligations under a loan, mortgage or home reversion.

## 5A. Mortgages and mortgage bonds

5A.1 R The *rule* in paragraph 5A.2R applies in relation to an *MCD credit agreement* with a *consumer* which is subject to the provisions concerning the creditworthiness assessment of *consumers* in Chapter 6 of the *MCD* (which were transposed in MCOB 11 and MCOB 11A).

5A.2 R If an agreement with a *consumer* within paragraph 5A.1R has as a pre-requisite the provision to that same *consumer* of an *investment service* in relation to mortgage bonds satisfying the conditions in paragraph 5A.3R in order for the loan to be payable, refinanced or redeemed, that *investment service* is not subject to the *rules* in this sourcebook which implemented article 25 of *MiFID*.

5A.3 R The conditions in paragraph 5A.2R are that the mortgage bonds:

(1) are specifically issued to secure the financing of the *MCD credit agreement* in paragraph 5A.1R; and

(2) have terms which are identical to the *MCD credit agreement* in paragraph 5A.1R.

[Note: article 25(7) of *MiFID*]

## 6. Use of third party processors in life insurance distribution activities

6.1 R If a *firm* (or its *appointed representative* or, where applicable, its *tied agent*) outsources *insurance distribution activities* to a *third party processor*:

(1) the *firm* must accept responsibility for the acts and omissions of that *third party processor* conducting those outsourced activities; and

(2) any *COBS rule* requiring the *third party processor's* identity to be disclosed to *clients* must be applied as a requirement to disclose the *firm's* identity;

unless the *third party processor* is giving *personal recommendations* in relation to *advising on investments* (except *P2P agreements*).

## 7. Modified meaning of regulated activities for UK AIFMs and UK UCITS management companies

7.1 R In determining whether a provision in *COBS* applies to a UK AIFM or a UK UCITS management company, an activity carried on by the *firm* which would be a *regulated activity* but for article 72AA (Managers of UCITS and AIFs) of the *Regulated Activities Order*, must be treated as a *regulated activity* carried on by the *firm*.

## 8. PRIIPs Regulation [deleted]

### Part 2: Where?

#### Modifications to the general application according to location

##### 1. EEA territorial scope rule: compatibility with European law [deleted]

##### 2. Business with UK clients from overseas establishments

2.1 R (1) This sourcebook applies to a *firm* which carries on business with a *client* in the *United Kingdom* from an establishment overseas.

(2) But the sourcebook does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:

- (a) would fall within the overseas *persons* exclusions in article 72 of the *Regulated Activities Order*; or
- (b) would not be regarded as carried on in the *United Kingdom*.

2.2 G [deleted]

### Part 3: Guidance

#### 1. The main extensions, modifications and restrictions to the general application

- 1.1 G The general application of this sourcebook is modified in Parts 1 and 2 of Annex 1 and in certain chapters of the *Handbook*. The modification may be an extension of the general application. For example, COBS 4 (Communicating with clients, including financial promotions) has extended the general application.
- 1.2 G [deleted]
- 1.3 G Certain chapters of this sourcebook apply only to *firms* in relation to their *MiFID, equivalent third country or optional exemption business* and, in some of these chapters, specified *insurance distribution activities* (sometimes only in relation to *insurance-based investment products*) while others apply only to *firms' designated investment business* which is not *MiFID, equivalent third country or optional exemption business* or, in some of these chapters, certain *insurance distribution activities*.
- 1.4 G COBS 18 (Specialist regimes) contains specialist regimes which modify the application of the provisions in this sourcebook for particular types of *firm* and business. To the extent that they are in conflict, the *rules* in COBS 18 on the application of the provisions in this sourcebook should be understood as overriding any other provision (whether in COBS 1 or an individual chapter) on the application of COBS.

#### 2. The Single Market Directives and other directives [deleted]

3. **MiFID: effect on territorial scope [deleted]**
4. **Insurance Distribution Directive: effect on territorial scope [deleted]**
5. **Solvency II Directive: effect on territorial scope [deleted]**
6. **Distance Marketing Directive: effect on territorial scope [deleted]**
7. **Electronic Commerce Directive: effect on territorial scope [deleted]**
8. **Investor Compensation Directive [deleted]**
9. **UCITS Directive: effect on territorial scope [deleted]**
10. **AIFMD: effect on territorial scope [deleted]**
11. **SRD: effect on territorial scope[deleted]**

