

Chapter 1

Application

Application (see COBS 1.1.2R)

Part 1: What?

Modifications to the general application of COBS according to activities

1.

Eligible counterparty business

1.1

R

The COBS provisions shown below do not apply to *eligible counterparty business* except, where the *eligible counterparty business* is in scope of the *IDD*, those provisions which implemented the *IDD* continue to apply.

COBS provision	Description
COBS 2 (other than COBS 2.1.1AR, COBS 2.2A and COBS 2.4)	Conduct of business obligations
COBS 4 (other than COBS 4.2, COBS 4.4.1R, COBS 4.5A.9UK and COBS 4.7.-1AUK)	Communicating with clients including financial promotions
COBS 6.1	Information about the firm, its services and remuneration (non-MiFID and non insurance distribution provisions)
COBS 6.1ZA.16R	Information about costs and charges of different services or products (MiFID provisions)
COBS 6.1ZA.22R	Compensation information (MiFID provisions)
COBS 8	Client agreements (non-MiFID provisions)
COBS 8A (other than COBS 8A.1.5UK to COBS 8A.1.8G)	Client agreements (MiFID provisions)
COBS 10	Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)
COBS 10A	Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)
COBS 11.2A, COBS 11.2B and COBS 11.3	Best execution, quality of execution and client order handling
COBS 12.2.18UK	Labelling of non-independent research
COBS 14.3	Information about designated investments (non-MiFID provisions)
COBS 16	Reporting information to clients (non-MiFID provisions)

[Note: paragraphs 1 and 2 of article 30(1) of *MiFID*]

2.

Transactions between an MTF operator and its users

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> .																		
		<table><tr><th>COBS provision</th><th>Description</th></tr><tr><td>COBS 2 (other than COBS 2.4)</td><td>Conduct of business obligations</td></tr><tr><td>COBS 4 (other than COBS 4.4.1R)</td><td>Communicating with clients, including financial promotions</td></tr><tr><td>COBS 6.1ZA</td><td>Information about the firm and compensation information (MiFID provisions)</td></tr><tr><td>COBS 8A</td><td>Client agreements (MiFID provisions)</td></tr><tr><td>COBS 10A</td><td>Appropriateness (for non-advised services) (MiFID provisions)</td></tr><tr><td>COBS 11.2A, COBS 11.2B, COBS 11.3 and COBS 11.4</td><td>Best execution, quality of execution, client order handling and client limit orders</td></tr><tr><td>COBS 14.3A</td><td>Information about financial instruments (MiFID provisions)</td></tr><tr><td>COBS 16A</td><td>Reporting information to clients (MiFID provisions)</td></tr></table>	COBS provision	Description	COBS 2 (other than COBS 2.4)	Conduct of business obligations	COBS 4 (other than COBS 4.4.1R)	Communicating with clients, including financial promotions	COBS 6.1ZA	Information about the firm and compensation information (MiFID provisions)	COBS 8A	Client agreements (MiFID provisions)	COBS 10A	Appropriateness (for non-advised services) (MiFID provisions)	COBS 11.2A, COBS 11.2B, COBS 11.3 and COBS 11.4	Best execution, quality of execution, client order handling and client limit orders	COBS 14.3A	Information about financial instruments (MiFID provisions)	COBS 16A	Reporting information to clients (MiFID provisions)
COBS provision	Description																			
COBS 2 (other than COBS 2.4)	Conduct of business obligations																			
COBS 4 (other than COBS 4.4.1R)	Communicating with clients, including financial promotions																			
COBS 6.1ZA	Information about the firm and compensation information (MiFID provisions)																			
COBS 8A	Client agreements (MiFID provisions)																			
COBS 10A	Appropriateness (for non-advised services) (MiFID provisions)																			
COBS 11.2A, COBS 11.2B, COBS 11.3 and COBS 11.4	Best execution, quality of execution, client order handling and client limit orders																			
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.		Transactions concluded on an MTF																		
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.		Operators of OTFs																		
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.		Transactions concluded on a regulated market																		
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.		Consumer credit products																		
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 *financial instrument* for the purpose 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 <i>person</i> and the activity:
		(a)	would fall within the overseas <i>persons</i> exclusions in article 72 of the <i>Regulated Activities Order</i> ; or
		(b)	would not be regarded as carried on in the <i>United Kingdom</i> .
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 <i>Handbook</i> . 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 <i>firms</i> in relation to their <i>MiFID</i> , <i>equivalent third country or optional exemption business</i> and, in some of these chapters, specified <i>insurance distribution activities</i> (sometimes only in relation to <i>insurance-based investment products</i>) while others apply only to <i>firms’ designated investment business</i> which is not <i>MiFID</i> , <i>equivalent third country or optional exemption business</i> or, in some of these chapters, certain <i>insurance distribution activities</i> .
1.4	G	COBS 18 (Specialist regimes) contains specialist regimes which modify the application of the provisions in this sourcebook for particular types of <i>firm</i> and business. To the extent that they are in conflict, the <i>rules</i> 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 <i>COBS</i> .
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]