

Conduct of Business Sourcebook

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 <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>]																												
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> .																		
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		[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 <i>EU-derived law</i> 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 *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]**