

## Chapter 14

# Providing product information to clients

## 14.3 Information about designated investments (non-MiFID provisions)

### Application

14.3.1

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This section applies to a *firm* in relation to:

- (1) [deleted]
- (2) any of the following *regulated activities* when carried on for a *retail client*:
  - (a) making a *personal recommendation* about a *designated investment*; or
  - (b) *managing investments* that are *designated investments* (other than a *P2P agreement*); or
  - (c) *arranging* (bringing about) or *executing a deal* in a *warrant, non-readily realisable security speculative illiquid security, or derivative*; or
  - (d) engaging in *stock lending activity*; or
  - (e) *operating an electronic system in relation to lending*, but only in relation to facilitating a person becoming a lender under a *P2P agreement*.

except to the extent that the carrying on of such a *regulated activity* constitutes *MiFID, equivalent third country or optional exemption business*.

- (3) Where a *rule* in this chapter applies to a *firm* which is *arranging* (bringing about) or *executing a deal* in a *speculative illiquid security*, the *rule* also applies to:
  - (a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of ■ GEN 2.2.26R); and
  - (b) a Gibraltar-based firm (having the same meaning as in the *Gibraltar Order*) to the extent that the *rule* does not already apply to such a Gibraltar-based firm as a result of ■ GEN 2.3.1R).

14.3.1A

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A *firm* carrying on *MiFID, equivalent third country or optional exemption business* should consider whether the requirements in articles 46 and 48 of the *MiFID Org Regulation* apply; see ■ COBS 14.3A (Information about financial instruments (MiFID provisions)).

**Providing a description of the nature and risks of designated investments**

14.3.2

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A firm must provide a client with a general description of the nature and risks of *designated investments*, taking into account, in particular, the *client's* categorisation as a *retail client* or a *professional client*. That description must:

- (1) explain the nature of the specific type of *designated investment* concerned, as well as the risks particular to that specific type of *designated investment*, in sufficient detail to enable the *client* to take investment decisions on an informed basis; and
- (2) include, where relevant to the specific type of *designated investment* concerned and the status and level of knowledge of the *client*, the following elements:
  - (a) the risks associated with that type of *designated investment* including an explanation of leverage and its effects and the risk of losing the entire investment;
  - (b) the volatility of the price of *designated investments* and any limitations on the available market for such investments;
  - (c) the fact that an investor might assume, as a result of transactions in such *designated investments*, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the *designated investments*; and
  - (d) any margin requirements or similar obligations, applicable to *designated investments* of that type.

14.3.3

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If a firm provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the *Prospectus Regulation*, that firm must inform the *retail client* where that prospectus is made available to the public.

14.3.4

**R**

Where the risks associated with a *designated investment* composed of two or more different *designated investments* or services are likely to be greater than the risks associated with any of the components, a firm must provide an adequate description of the components of that *designated investment* and the way in which its interaction increases the risks.

14.3.5

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In the case of a *designated investment* that incorporates a guarantee by a third party, the information about the guarantee must include sufficient detail about the guarantor and the guarantee to enable the *retail client* to make a fair assessment of the guarantee.

**Satisfying the provision rules**

14.3.6

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**14.3.7** G Providing a *key features document*, *key investor information document*, *EEA key investor information document* or *NURS-KII document* may satisfy the requirements of the *rules* in this section.

### Firms advising on P2P agreements

**14.3.7A** G Examples of information a *firm advising on P2P agreements or P2P portfolios* should provide to explain the specific nature and risks of a *P2P agreement* or a *P2P portfolio* include:

- (1) expected and actual default rates in line with the requirements in ■ COBS 4.6 on past and future performance;
- (2) a summary of the assumptions used in determining expected future default rates;
- (3) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the *operator of the electronic system in relation to lending* considers the borrower eligible for a *P2P agreement*;
- (4) where lenders have the choice to invest in specific *P2P agreements*, details of the creditworthiness assessment of the borrower carried out;
- (5) whether the *P2P agreement* benefits from any security and if so, what;
- (6) a fair description of the likely actual return, taking into account fees, default rates and taxation;
- (7) an explanation of how any tax liability for lenders arising from investment in *P2P agreements* would be calculated;
- (8) an explanation of the *operator of the electronic system in relation to lending's* procedure for dealing with a loan in late payment or default;
- (9) the procedure for a lender to access their money before the term of the *P2P agreement* has expired; and
- (10) an explanation of what would happen if the *operator of the electronic system in relation to lending* fails, including confirmation that there is no recourse to the Financial Services Compensation Scheme.

**14.3.7B** G When complying with the information requirements set out in this chapter and other parts of the *FCA Handbook*, *firms* advising on a *P2P agreement* or a *P2P portfolio* may also wish to consider providing to *retail clients* any other information that an *operator of an electronic system in relation to lending* must disclose in accordance with ■ COBS 18.12.

**14.3.7C** G *Firms* providing information to *clients*, and communicating information, about an *innovative finance ISA* should also have regard to the *guidance* in ■ COBS 4.5.9G.

**Product information: form**

14.3.8 **R** The *documents* and information provided in accordance with the *rules* in this section must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

**The timing rules**

14.3.9 **R**

- (1) The information to be provided in accordance with the *rules* in this section must be provided in good time before a *firm* carries on *designated investment business* with or for a *retail client*.
- (2) A *firm* may provide that information immediately after it begins to carry on that business if:
  - (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from complying with that *rule*; and
  - (b) in any case where the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* as if the *client* was a *consumer*.

**Keeping the client up-to-date**

14.3.10 **R** A *firm* must notify a *client* in good time about any material change to the information provided under the *rules* in this section which is relevant to a service that the *firm* is providing to that *client*. That notification must be given in a *durable medium* if the information to which it relates is given in a *durable medium*.

**Information about UCITS schemes**

14.3.11 **R** If a *firm* provides a *client* with a *key investor information document* or *EEA key investor information document* that meets all of the requirements applying in relation to that *document*, it will have provided appropriate information for the purpose of the requirement to disclose information on:

- (1) *designated investments* and investment strategies (■ COBS 2.2.1R (1)(b)); and
- (2) costs and associated charges (■ COBS 2.2.1R (1)(d) and ■ COBS 6.1.9 R;

in relation to the costs and associated charges in respect of the *UCITS scheme* itself, including the exit and entry commissions.

**Information about KII-compliant NURS**

14.3.11A **R** If a *firm* provides a *client* with a *NURS-KII document* it will have provided appropriate information for the requirement to disclose information on:

- (1) *designated investments* and investment strategies (■ COBS 2.2.1R(1)(b)); and

(2) costs and associated charges (■ COBS 2.2.1R(1)(d) and ■ COBS 6.1.9R);

in relation to the costs and associated charges for the *KII-compliant NURS* itself, including the exit and entry commissions.

**Distributor disclosure requirements for UCITS or KII-compliant NURS**

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14.3.12

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A *key investor information document* and *EEA key investor information document* or a *NURS-KII document* provide sufficient information in relation to the costs and associated charges in respect of the *UCITS* or *KII-compliant NURS* itself. However, a *firm* distributing *units* in a *UCITS* or *KII-compliant NURS* should also inform a *client* about all of the other costs and associated charges related to the provision of its services in relation to *units* in the *UCITS* or *KII-compliant NURS*.