

## Chapter 18

# Specialist Regimes

## 18.1 Trustee Firms

### Application

- 18.1.1** **R** (1) This section applies to the *MiFID, equivalent third country or optional exemption business* carried on by a *trustee firm*.
- (2) It does not apply to a *trustee firm* when acting as:
- (a) a *depository*; or
  - (b) the trustee of a *personal pension scheme or stakeholder pension scheme*.

### Application of COBS to trustee firms

- 18.1.2** **R** The provisions of *COBS* in the table do not apply to a *trustee firm* to which this section applies:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
6.4	Disclosure of charges, remuneration and commission
9.6	Special rules for providing basic advice on a stakeholder product
16A.4.5	Guidance on contingent liability transactions

- 18.1.2A** **G** This section applies to the *MiFID, equivalent third country or optional exemption business* carried on by a *trustee firm*. As such, the list in **■ COBS 18.1.2R** above does not include any provisions in *COBS* which do not apply to *MiFID, equivalent third country or optional exemption business*.

- 18.1.3** **G** The provisions of *COBS* in the table are unlikely to be relevant in relation to a *trustee firm* to which this section applies:

COBS	Description
5	Distance communications
13	Preparing product information
14.2	Providing product information
15	Cancellation
17	Claims handling for long-term care insurance
18.2	Energy market activity and oil market activity
18.3	Corporate finance business
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

**Duties of trustee firms under the general law**

- 18.1.4 **G** To the extent a *rule* in *COBS* applies to a *trustee firm*, that *rule*:
- (1) applies in addition to any duties or powers imposed or conferred upon a trustee by the general law; and
  - (2) does not qualify or restrict the duties or powers that the general law imposes or confers upon a trustee; *trustee firms* will be under a duty to observe the provisions of their trust instrument; if its provisions conflict with any applicable *rule*, *trustee firms* will need to take advice in resolving the conflict.

**Considering and complying with applicable COBS rules**

- 18.1.5 **G** In considering and reaching decisions as to how applicable rules in *COBS* apply in the context of a particular trust arrangement, a *trustee firm* should consider the nature of that arrangement and the provisions of the relevant trust instrument.

**References to "client" in applicable COBS rules**

- 18.1.6 **G** Where an applicable *rule* in *COBS* requires the doing of any thing in relation to a *client*, the *trustee firm* should consider who, in the context of that *rule* and having regard to the particular trust arrangement, is the most appropriate person to treat as its *client*. This might, for example, be the beneficiary, another trustee or the trust, depending on the particular circumstances.

## 18.2 Energy market activity and oil market activity

### Energy market activity and oil market activity - MiFID business

18.2.1

R

The provisions of *COBS* in the table do not apply in relation to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
16.3.9	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

18.2.2

G

The provisions of *COBS* in the table are unlikely to be relevant to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
5	Distance communications
7	Insurance distribution
13	Preparing product information
14.2	Providing product information to clients

COBS	Description
15	Cancellation
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime
18.3	Corporate finance business
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

**Energy market activity and oil market activity - non-MiFID business**

18.2.3

**R**

Only the COBS provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not:

- (1) *MiFID* or equivalent third country business; or
- (2) *energy market activity* or *oil market activity* set out in ■ COBS 18.2.4 R.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, but only in relation to <i>communicating</i> or <i>approving a financial promotion</i>
5.2	E-commerce
12	Investment research and non-independent research
16.2	Occasional reporting

**Energy market activity and oil market activity - dealings with or through authorised persons**

18.2.4

**R**

Only the COBS provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not *MiFID* or equivalent third country business but which, if the *firm* were not *authorised*, would not be a *regulated activity* because of article 16 of the *Regulated Activities Order* (Dealing in contractually based investments) or article 22 of the *Regulated Activities Order* (Deals with or through authorised persons etc.).

COBS	Description
1	Application
2.4	Agent as client and reliance on others
4.12	Unregulated collective investment schemes
5.2	E-commerce

**Other non-MiFID business related to commodity or exotic derivative instruments**

**18.2.5** **R** COBS applies as set out in the table to *firms* in respect of activities referred to in the *general application rule* related to:

- (1) *commodity futures*; or
- (2) *commodity options*; or
- (3) *contracts for differences* related to an underlying *commodity*; or
- (4) other *futures* or *contracts for differences* which are not related to *commodities*, financial instruments or cash;

which is not *MiFID* or *equivalent third country business and energy market activity* or *oil market activity*.

**Application of COBS to other non-MiFID business related to commodity derivative instruments**

All of COBS applies, except COBS 18.2.6 R to COBS 18.2.9 E applies instead of COBS 11.2 (Best execution)

**Best execution for other non-MiFID business related to commodity and exotic derivative instruments**

**18.2.6** **R** A *firm* that *executes a customer order* in the course of carrying out activities referred to in **R** COBS 18.2.5 R must provide best execution.

**Exceptions to best execution**

**18.2.7** **R** The duty to provide best execution does not apply where:

- (1) the *firm* has agreed with a *professional client* that it does not owe a duty of best execution to him; or
- (2) the *firm* relies on another *person* to whom it passes a *customer order* for *execution* to provide best execution, but only if it has taken reasonable care to ensure that he will do so.

**Providing best execution**

**18.2.8** **R** To provide best execution, a *firm* must:

- (1) take reasonable care to ascertain the price which is the best available for the *customer order* in the relevant market at the time for transactions of the kind and size concerned; and
- (2) *execute the customer order* at a price which is no less advantageous to the *customer*, unless the *firm* has taken reasonable steps to ensure that it would be in the *customer's* best interests not to do so.

**18.2.9** **E** (1) In order to take reasonable care to ascertain the price which is the best available, a *firm*:

- (a) should disregard any *charges* and *commission* made by it or its agents that are disclosed to the *customer* under ■ COBS 6.1.9 R (Information about costs and associated charges);
  - (b) need not have access to competing exchanges, or to all, or a minimum number of, available price sources; but if a *firm* can access prices displayed by different exchanges and trading platforms and make a direct and immediate comparison, it should *execute* the *customer order* at the best price available to the firm on such exchanges or trading platforms, if this is in the best interests of the *customer*;
  - (c) should pass on to the *customer* the price at which it *executes* the transaction to meet the *customer order*; and
  - (d) should not take a *mark-up* or *mark-down* from the price at which it *executes* the *customer order*.
- (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))
  - (3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))

**18.3 Corporate finance business**

**Corporate finance business - MiFID business**

18.3.1

**R**

The provisions of *COBS* in the table do not apply in respect of any *corporate finance business* carried on by a *firm* which is *MiFID* or equivalent *third country business*:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
COBS 16.3.7	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

18.3.2

**G**

The provisions of *COBS* in the table are unlikely to be relevant to any *corporate finance business* carried on by a *firm* which is *MiFID* or equivalent *third country business*:

COBS	Description
5	Distance communications, except in relation to <i>distance contracts</i> concluded with <i>consumers</i>
7	Insurance distribution



13	Preparing product information
14.2	Providing product information
15	Cancellation, except cancellation and withdrawal rights in relation to <i>distance contracts</i> concluded with <i>consumers</i>
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime
18.2	Energy market activity and oil market activity
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

**Corporate finance business - non-MiFID business**

18.3.3

**R**

Only the provisions of COBS in the table apply to *corporate finance business* carried on by a *firm* which is not *MiFID* or *equivalent third country business* or *MiFID optional exemption business*.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.3A	Inducements
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, except COBS 4.5 - COBS 4.11
5.1	The information and other requirements of the Distance Marketing Directive, but only in relation to <i>distance contracts</i> concluded with <i>consumers</i>
5.2	E-commerce
11.7A	Personal account dealing
11A.2	Prohibition of future service restrictions
12	Investment research and non-independent research
15	Cancellation, but only in relation to <i>distance contracts</i> concluded with <i>consumers</i>

**Corporate finance business – optionally exempt business**

18.3.3A

**R**

Only the provisions of COBS in the table apply to *corporate finance business* which is *MiFID optional exemption business*.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.2A	Information disclosures before providing services
2.3A	Inducements
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, except COBS 4.5-COBS 4.6 and COBS 4.8 - COBS 4.11
5.1	The information and other requirements of the Distance Marketing Directive, but only in relation to distance contracts concluded with consumers
5.2	E-commerce
6.1A	Information about the firm, its services and remuneration
6.2B	Describing advice services
8A	Client agreements
9A	Suitability
11.7A	Personal account dealing
12	Investment research
14.3.1A	Information about financial instruments
15	Cancellation, but only in relation to distance contracts concluded with consumers
16A	Reporting information to clients

## 18.3.4

G

■ COBS 15 (Cancellation) is likely to be of limited application to *corporate finance business*. *Distance contracts* concluded with *consumers* in the course of *corporate finance business* will be exempt from ■ COBS 15 if the price of the financial service is dependent on fluctuations in the financial market outside the *firm's* control.

## 18.4 Stock lending activity

**18.4.1** **R** The provisions of *COBS* in the table do not apply in relation to any *stock lending activity* carried on by a *firm*:

COBS	Subject
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
COBS 16A.4.5	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

**18.4.2** **G** The provisions of *COBS* in the table are unlikely to be relevant in relation to any *stock lending activity* carried on by a *firm*:

COBS	Description
5	Distance communications, except in relation to <i>distance contracts</i> concluded with <i>consumers</i>
7	Insurance distribution
13	Preparing product information
14.2	Providing product information
15	Cancellation, except cancellation and withdrawal rights in relation to <i>distance contracts</i> concluded with <i>consumers</i>
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime

18.2	Energy market activity and oil market activity
19	Pensions - supplementary provisions
20	With-profits



## 18.5 Residual CIS operators and small authorised UK AIFMs

### Application

**18.5.1** **R** Subject to **■** COBS 18.5.1A R, this section applies to a *firm* which is:

- (1) [deleted]
- (2) [deleted]
- (3) a *small authorised UK AIFM*; or
- (4) a *residual CIS operator*.
- (5) [deleted]

**18.5.1A** **R** **■** COBS 18.5.3 R (2) and **■** COBS 18.5.5 R to **■** COBS 18.5.18 E do not apply to a *small authorised UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme*.

**18.5.1B** **R** [deleted]

### Application or modification of general COBS rules

**18.5.2** **R** A *firm* when it is carrying on *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Small authorised UK AIFM and a residual CIS operator
1 (Application)	Applies
2.1.1R (The client's best interests rule)	Applies
2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)	Applies

2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1
2.4 (Agent as client and reliance on others)	Applies
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies
5.2 (E-commerce)	Applies
11.2 (Best execution for AIFMs and residual CIS operators)	Applies to a <i>small authorised UK AIFM</i> of an <i>authorised AIF</i> . Applies (as modified by COBS 18.5.4R) to a <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or <i>residual CIS operator</i> .
11.3 (Client order handling)	Applies
16.3 (Periodic reporting)	Applies to a <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> which is not a <i>collective investment scheme</i> , as modified by COBS 18.5.4BR. Otherwise does not apply.
18.5 (Residual CIS operators and small authorised UK AIFMs)	Applies
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies (subject to COBS 18.5.3CR)
18 Annex 2 (Record keeping: client orders and transactions)	Applies

18.5.2-A G [deleted]

- 18.5.2-B G
- (1) For activities which are not *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*, the *COBS rules* apply under the general application rule, as modified in ■ COBS 1 Annex 1.
  - (2) This may include, for example, activities relating to the administration of the *fund* and *marketing*.

18.5.2A R [deleted]

### General modifications

- 18.5.3 R Where *COBS rules* specified in the table in ■ COBS 18.5.2 R apply to a *firm* carrying on *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*, the following modifications apply:
- (1) subject to (2), references to *customer* or *client* are to be construed as references to any *fund* for which the *firm* is acting or intends to act;
  - (2) in the case of a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator*, when a *firm* is required by the *rules* in *COBS* to provide information to, or obtain consent from, a *customer* or *client*, the *firm* must ensure that the information is provided to, or consent obtained from, an investor or a potential investor in the *fund* as the case may be; and

		(3) references to the service of <i>portfolio management</i> in ■ COBS 11.2 (Best execution for AIFMs and residual CIS operators) and ■ 11.3 (Client order handling) are to be read as references to the management by a <i>firm of financial instruments</i> held for or within the <i>fund</i> .
		(4) [deleted]
18.5.3A	G	<p>(1) ■ COBS 1.2 (Markets in Financial Instruments Directive) contains modifications to the text of the <i>MiFID Org Regulation</i> where this is applied as <i>rules to firms</i> that are not subject to those provisions directly.</p> <p>(2) These modifications apply to ■ COBS 11.3 (Client order handling), which is applied in the table at ■ COBS 18.5.2R.</p>
		<b>Research and inducements</b>
18.5.3B	R	Subject to ■ COBS 18.5.3CR, a <i>firm</i> must comply with ■ COBS 18 Annex 1 (Research and inducements for collective portfolio managers) when executing orders, or placing orders with other entities for <i>execution</i> , that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i> .
18.5.3C	R	<p>■ COBS 18 Annex 1 does not apply in relation to an <i>AIF</i> or <i>CIS</i> which in accordance with its core investment policy:</p> <p>(1) does not generally invest in <i>financial instruments</i> that can be:</p> <ul style="list-style-type: none"> <li>(a) registered in a <i>financial instruments</i> account opened in the books of a <i>depository</i>; or</li> <li>(b) physically delivered to the <i>depository</i>; or</li> </ul> <p>(2) generally invests in <i>issuers</i> or <i>non-listed companies</i> to potentially acquire <i>control</i> over such companies, either individually or jointly with other <i>funds</i>.</p>
		<b>Modification of best execution</b>
18.5.4	R	The best execution provisions in ■ COBS 11.2 (Best execution for AIFMs and residual CIS operators) do not apply to a <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or a <i>residual CIS operator</i> of a <i>fund</i> whose <i>fund</i> documents include a statement that best execution does not apply in relation to the <i>fund</i> and in which:
		(1) no investor is a <i>retail client</i> ; or
		(2) no current investor in the <i>fund</i> was a <i>retail client</i> when it invested in the <i>fund</i> .
18.5.4A	R	[deleted]

**Modification of periodic reporting requirements**

**18.5.4B** **R** A *small authorised UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme* must comply with **COBS 16.3** (Periodic reporting) with references to *managing investments* to be construed as providing *AIFM investment management functions*.

**18.5.4C** **R** [deleted]

**18.5.4D** **G** [deleted]

**Scheme documents for an unauthorised fund**

**18.5.5** **R** A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* must not accept a *retail client* as an investor in the *fund* unless it has taken reasonable steps to offer and, if requested, provide to the potential investor, fund documents which adequately describe how the *fund* is governed.

**Prohibition on issue of bearer units**

**18.5.5-A** **G** The effect of section 241A of the *Act* is that no bearer *units* in a *collective investment scheme* may be issued, converted or cancelled from 1 January 2021. However, the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346) contain transitional provisions for the conversion of bearer *units* to registered *units* and the cancellation of bearer *units* on or before 1 January 2022.

**Distance marketing**

**18.5.5A** **G** *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK*, **COBS 5.1** applies specific requirements for that activity.

**Format and content of fund documents**

**18.5.6** **G** The fund documents required under **COBS 18.5.5 R** may consist of any number of *documents* provided that it is clear that collectively they constitute the fund documents and provided the use of several *documents* in no way diminishes the significance of any of the statements which are required to be given to the potential investor.

**18.5.6A** **G** Where a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* is required to publish a *key information document*, only information that is additional to that contained in the *key information document* needs be disclosed under **COBS 18.5.5R**.

**18.5.7** **G** The fund documents of an *unauthorised fund* managed by a *small authorised UK AIFM* or a *residual CIS operator* (if those fund documents exist) should make it clear that if an investor is reclassified as a *retail client*, this reclassification will not affect certain activities of the *firm*. In particular, despite such a reclassification, the *firm* will not be required to comply with



the best execution provisions. It should be noted that there is no requirement that fund documents must be produced by a *small authorised UK AIFM* of an *unauthorised fund* or a *residual CIS operator* unless they are required to prepare a *key information document* under the *PRIPs Regulation*.

**18.5.8** **R** Where the *fund* is an *unauthorised fund* managed by a *small authorised UK AIFM* or a *residual CIS operator* and no current investor in the *fund* was a *retail client* when it invested in the *fund*, the fund documents must include a statement that:

- (1) explains that if an investor is reclassified as a *retail client* subsequent to investing in the *fund*, then the *firm* may continue to treat all investors in the *fund* as though they were not *retail clients*;
- (2) explains that if an investor is reclassified as a *retail client* subsequent to investing in the *fund*, then the modification of best execution (see **COBS 18.5.4 R**) will continue to apply to that fund; and
- (3) explains that, in the event of such a reclassification, the *firm* will not be required to provide best execution in relation to the *fund*.

**18.5.9** **G** A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* will still have to comply with other *COBS* provisions as a result of the reclassification of an investor as a *retail client*. For example, the *firm* must provide *periodic statements* to investors who are *retail clients* in an *unauthorised fund* (see the rule on periodic statements for an unauthorised fund (**COBS 18.5.11 R**)).

**18.5.9A** **G** A *small authorised UK AIFM* that uses a *sustainability label*, or one of the terms in **ESG 4.3.2R(2)** in accordance with **ESG 4.3.2R(1)**, in relation to a *UK AIF* is reminded of its obligations in **ESG 5.3** to **ESG 5.5** relating to the preparation of Part A of a *public product-level sustainability report*.

**Adequate information**

**18.5.10** **E** (1) In order to provide adequate information to describe how the *fund* is governed, a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* should include in the fund documents a provision about each of the items of relevant information set out in the following table (Content of fund documents).

(2) Compliance with (1) may be relied on as tending to establish compliance with **COBS 18.5.5 R**.

(3) Contravention of (1) may be relied on as tending to establish contravention of **COBS 18.5.5 R**.

Table: Content of fund documents

The <i>fund</i> documents should include provision about:	
(1)	Regulator The <i>firm</i> statutory status in accordance with GEN 4 Annex 1 R (Statutory status disclosure);

The *fund* documents should include provision about:

- (2) Services  
the nature of the services that the *firm* will provide;
- (3) Payments for services  
details of any payment for services payable by the *fund* or from the property of the fund or investors in the *fund* to the *firm*, including where appropriate:
  - (a) the basis of calculation;
  - (b) how it is to be paid and collected;
  - (c) how frequently it is to be paid; and
  - (d) whether or not any other payment is receivable by the *firm* (or to its knowledge by any of its *associates*) in connection with any transactions effected by the *firm* with or for the *fund*, in addition to or in lieu of any fees;
- (4) Commencement  
when and how the *firm* is appointed;
- (5) Accounting  
the arrangements for accounting to the *fund* or investors in the *fund* for any transaction effected;
- (6) Termination method  
how the appointment of the *firm* may be terminated;
- (7) Complaints procedure  
how to complain to the *firm* and a statement that the investors in the *fund* may subsequently complain direct to the *Financial Ombudsman Service*;
- (8) Compensation  
whether or not compensation may be available from the *compensation scheme* should the *firm* be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable compensation scheme, the extent and level of cover and how further information can be obtained;
- (9) Investment objectives  
the investment objectives for the portfolio of the *fund*;
- (10) Restrictions
  - (a) any restrictions on:
    - (i) the types of *investments* or property which may be included in the portfolio of the *fund*;
    - (ii) the markets on which *investments* or property may be acquired for the portfolio of the *fund*;
    - (iii) the amount or value of any one *investment* or asset, or on the proportion of the portfolio of the *fund* which any one *investment* or asset or any particular kind of *investment* or asset may constitute; or
  - (b) that there are no such restrictions;

## The fund documents should include provision about:

- (11) Holding fund assets
- (a) if it is the case, that the *firm* will:
- (i) hold *money* on behalf of the *fund* or be the *custodian* of *investments* or other property of the *fund*; or
  - (ii) arrange for some other *person* to act in either capacity and, if so, whether that *person* is an associate of the *firm* identifying that *person* and describing the nature of any association; and
- (b) in either case:
- (i) how any *money* is to be deposited;
  - (ii) the arrangements for recording and separately identifying registrable *investments* of the *fund* and, where the registered holder is the *firm's* own nominee, that the *firm* will be responsible for the acts and omissions of that *person*;
  - (iii) the extent to which the *firm* accepts liability for any loss of the *investment* of the *fund*;
  - (iv) the extent to which the *firm* or any other *person* mentioned in (11)(a)(ii), may hold a lien or security interest over *investments* of the *fund*;
  - (v) where *investments* of the *fund* will be registered collectively in the same name, a statement that the entitlements of the *fund* may not be identifiable by separate certificates or other physical documents of title, and that, should the *firm* default, any shortfall in *investments* of the *fund* registered in that name may be shared proportionately among all *fund* and any other *customers* of the *firm* whose *investments* are so registered;
  - (vi) whether or not *investments* or other property of the *fund* can be lent to, or deposited by way of collateral with, a third party and whether or not *money* can be borrowed on behalf of the *fund* against the security of those *investments* or property and, if so, the terms upon which they may be lent or deposited;
  - (vii) the arrangements for accounting to the *fund* for *investments* of the *fund*, for income received (including any interest on *money* and any income earned by lending *investments* or other property) of the *fund*, and for rights conferred in respect of *investments* or other property of the *fund*;

The *fund* documents should include provision about:

- (viii) the arrangements for determining the exercise of any voting rights conferred by *investments* of the *fund*; and
  - (ix) where *investments* of the *fund* may be held by an eligible *custodian* outside the *United Kingdom*, a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those *investments*, may apply;
- (12) Clients' money outside the United Kingdom  
if it is the case, that the *firm* may hold the *money* of the *fund* in a *client bank account* outside the *United Kingdom*;
- (13) Exchange rates  
if a liability of the *fund* in one currency is to be matched by an asset in a different currency, or if the services to be provided to the *firm* for the *fund* may relate to an *investment* denominated in a currency other than the currency in which the *investments* of the *fund* are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the *investments* of the *fund*;
- (14) Stabilised investments  
if it is the case, that the *firm* is to have the right under the *fund documents* to effect transactions in *investments* the prices of which may be the subject of stabilisation;
- (15) Conflict of interest and material interest  
if it is the case, that the *firm* is to have the right under the agreement or *instrument constituting the fund* to effect transactions on behalf of the *fund* in which the *firm* has directly or indirectly a material interest (except for an interest arising solely from the investment of the *firm* as agent for the *fund*), or a relationship of any description with another party which may involve a conflict with the *firm* duty to the *fund*, together with a disclosure of the nature of the interest or relationship;
- (16) Research and inducements  
how the firm intends to pay for research. For example, whether the firm proposes to pay for research directly or to use a research payment account;
- (17) Acting as principal  
if it is the case, that the *firm* may act as *principal* in a transaction with the *fund*;
- (18) Stock lending  
if it is the case, that the *firm* may undertake *stock lending activity* with or for the *fund* specifying the type of assets of the *fund* to be lent, the type and value of *relevant collateral* from the borrower and the method and amount of payment due to the *fund* in respect of the lending;
- (19) Transactions involving contingent liability investments
- (a) if it is the case, that the agreement or *instrument constituting the fund* allows the *firm* to effect transactions involving *contingent liability invest-*

## The fund documents should include provision about:

- ments* for the account of the portfolio of the *fund*;
- (b) if applicable, whether there are any limits on the amount to be committed by way of margin and, if so, what those limits are; and
- (c) if applicable, that the *firm* has the authority to effect transactions involving *contingent liability investments* otherwise than under the rules of a *recognised investment exchange* and in a contract traded thereon;
- (20) Periodic statements
- (a) the frequency of any *periodic statement* (this should not be less than once every 12 months) except where a *periodic statement* is not required (see COBS 18.5.13R); and
- (b) whether those statements will include some measure of performance, and, if so, what the basis of that measurement will be;
- (21) Valuation
- the bases on which assets comprised in the portfolio of the *fund* are to be valued;
- (22) Borrowings
- if it is the case, that the *firm* may supplement the funds in the portfolio of the *fund* and, if it may do so:
- (a) the circumstances in which the *firm* may do so;
- (b) whether there are any limits on the extent to which the *firm* may do so and, if so, what those limits are; and
- (c) any circumstances in which such limits may be exceeded;
- (23) Underwriting commitments
- if it is the case, that the *firm* may for the account of the portfolio of the *fund* underwrite or sub-underwrite any issue or offer for sale of *securities*, and:
- (a) whether there are any restrictions on the categories of *securities* which may be underwritten and, if so, what these restrictions are; and
- (b) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;
- (24) Investments in other funds
- whether or not the portfolio may invest in *fund* either managed or advised by the *firm* or by an *associate* of the *firm* or in a *fund* which is not a *regulated collective investment scheme*;
- (25) Investments in securities underwritten by the firm
- whether or not the portfolio may contain *securities* of which any issue or offer for sale was underwritten, managed or arranged by the *firm* or by an *associate* of the *firm* during the preceding 12 months.

18.5.10A **R** [deleted]

18.5.10B **G** [deleted]

### Periodic statements for an unauthorised fund

18.5.11 **R** *A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator must, subject to the exceptions from the requirement to provide a periodic statement, provide to investors in the fund, promptly and at suitable intervals, a statement in a durable medium which contains adequate information on the value and composition of the portfolio of the fund at the beginning and end of the period of the statement.*

### Promptness, suitable intervals and adequate information

- 18.5.12 **E**
- (1) *A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator should act in accordance with the provisions in the right hand column of the periodic statements table (see **COBS 18.5.15E**) to fulfil the requirement to prepare and issue periodic statements indicated in the left hand column against these provisions.*
  - (2) *Compliance with (1) may be relied on as tending to establish compliance with the requirement to prepare and issue periodic statements.*
  - (3) *Contravention of (1) may be relied on as tending to establish contravention of the requirement to prepare and issue periodic statements.*

### Exceptions from the requirement to provide a periodic statement

- 18.5.13 **R**
- (1) *A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator need not provide a periodic statement:*
    - (a) *(i) to an investor in the fund who is a retail client ordinarily resident outside the United Kingdom; or*
    - (ii) to an investor in the fund who is a professional client; if the investor has so requested or the firm has taken reasonable steps to establish that the investor does not wish to receive it; or*
    - (b) if it would duplicate a statement to be provided by someone else.*
  - (2) [deleted]

### Record keeping requirements

18.5.14 **R** *A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator must make a copy of any periodic statement it has provided in accordance with the requirement to prepare and issue periodic statements to investors in the fund. The record must be retained for a minimum period of three years.*

18.5.15 **E** Table: Periodic statements

This table belongs to ■ COBS 18.5.12 E.

Periodic statements			
Suitable intervals	(1)	A <i>periodic statement</i> should be provided at least:	
		(a)	six-monthly; or
		(b)	once in any other period, not exceeding 12 months, which has been mutually agreed between the <i>firm</i> and the investor in the <i>fund</i> .
Adequate information	(2)	(a)	A <i>periodic statement</i> should contain:
		(i)	(A) The information set out in the table of general contents of a <i>periodic statement</i> ;
			(B) where the portfolio of the <i>fund</i> includes uncovered open positions in <i>contingent liability investments</i> , the additional information in the table listing the contents of a <i>periodic statement</i> (see COBS 18.5.18 E) in respect of contingent liability investments; or
		(ii)	such information as an investor who is a <i>retail client</i> ordinarily resident outside the <i>United Kingdom</i> , or a <i>professional client</i> , has on his own initiative agreed with the <i>firm</i> as adequate.
		(b)	[deleted]

18.5.16 **G** Examples of uncovered open positions include:

- (1) selling a call *option* on an *investment* not held in the portfolio;
- (2) unsettled sales of call *options* on currency in amounts greater than the portfolio's holding of that currency in cash or in *readily realisable investments* denominated in that currency; and
- (3) transactions having the effect of *selling* an index to an amount greater than the portfolio's holdings of *investments* included in that index.

18.5.17 **E** Table: General contents of a periodic statement

This table belongs to ■ COBS 18.5.15 E.

General contents of periodic statements	
1	Contents and value

## General contents of periodic statements

(a)	As at the beginning of the account period, the total value of the portfolio of the <i>fund</i> , being either: <ul style="list-style-type: none"> <li>(i) the value of the assets comprised in the portfolio on the date as at which the statement provided for the immediately preceding period of account is made up; or</li> <li>(ii) in the case of the first <i>periodic statement</i>, the value of the assets comprised in the portfolio on the date on which the <i>firm</i> assumed responsibility for the management of the portfolio.</li> </ul>
(b)	As at the end of the account period: <ul style="list-style-type: none"> <li>(i) the number, description and value of each <i>investment</i> held on behalf of the <i>fund</i>;</li> <li>(ii) the amount of cash held on behalf of the <i>fund</i>; and</li> <li>(iii) the total value of the portfolio of the <i>fund</i>.</li> </ul>
2	<p>Basis of valuation</p> <p>A statement of the basis on which the value of each <i>investment</i> has been calculated and, if applicable, a statement that the basis for valuing a particular <i>investment</i> has changed since the previous <i>periodic statement</i>. Where any <i>investments</i> are shown in a currency other than the usual one used for valuation of the portfolio of the <i>fund</i>, the relevant currency exchange rates must be shown.</p>
3	<p>Details of any assets loaned or charged</p> <ul style="list-style-type: none"> <li>(a) A summary of those <i>investments</i> (if any) which were, at the closing date, loaned to any third party and those <i>investments</i> (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the <i>fund</i>; and</li> <li>(b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during the period.</li> </ul>
4	<p>Transactions and changes in composition</p> <p>Except in the case of a portfolio which aims to track the performance of an external index:</p>



## General contents of periodic statements

- (a) a statement that summarises the transactions entered into for the portfolio of the *fund* during the period; and
- (b) the aggregate of *money* and a summary of all investments transferred into and out of the portfolio of the *fund* during the period; and
- (c) the aggregate of any interest payments, dividends and other benefits received by the *firm* for the portfolio of the *fund* during that period.
- 5 Charges and remuneration
- If not previously advised in writing, a statement for the account period:
- (a) of the aggregate charges of the *firm* and its *associates*; and
- (b) of any *remuneration* received by the *firm* or its *associates* or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio of the *fund*.
- 6 Movement in value of portfolio
- A statement of the difference between the value of the portfolio at the closing date and its value at the starting date of the account period, having regard at least, during the account period, to the following:
- (a) the aggregate of assets received from investors of the *fund* and added to the portfolio of the *fund*;
- (b) the aggregate of the value of assets transferred, or of amounts paid, to the *fund*;
- (c) the aggregate income received on behalf of the *fund* in respect of the portfolio; and
- (d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio of the *fund*.

## Notes:

For the purposes of Item 1, where the *fund* is a *property enterprise trust*, it will be sufficient for the *periodic statement* to disclose the number of properties held in successive valuation bands where this is appropriate to the size and composition of the *fund*, rather than the value of each asset in the portfolio. The valuation bands of over £10m, £5-£10m, £2.5-£5m, £1-£2.5m and under £1m would be appropriate, unless a *firm* could show that different bands were justifiable in the circumstances.

The statement to be provided under Item 6 is not intended to be an indicator of the performance of the portfolio of the *fund*.

A *firm* may wish to distinguish capital and income, and thereby provide more information than referred to in this table. If the statement includes some measure of performance, the basis of measurement should be stated.

18.5.18

E

Table: Contents of a periodic statement in respect of contingent liability investments

This table belongs to ■ COBS 18.5.15 E.

## Contents of a periodic statement in respect of contingent liability investments

- (1) Changes in value  
The aggregate of *money* transferred into and out of the portfolio of the *fund* during the account period.
- (2) Open positions  
In relation to each open position in the portfolio of the *fund* at the end of the account period, the unrealised profit or loss to the portfolio of the *fund* (before deducting or adding any *commission* which would be payable on closing out).
- (3) Closed positions  
In relation to each transaction effected during the account period to close out a position of the *fund*, the resulting profit or loss to the portfolio of the *fund* after deducting or adding any *commission*.  
  
(Instead of the specific detail required by Items 2 or 3, the statement may show the net profit or loss in respect of the overall position of the *fund* in each contract)
- (4) Aggregate of contents  
The aggregate of each of the following in, or relating to, the portfolio of the *fund* at the close of business on the valuation date:
- (a) cash;
  - (b) *collateral* value;
  - (c) management fees; and
  - (d) *commissions* attributable to transactions during the period or a statement that this information has been separately disclosed in writing on earlier statements or confirmations to the investor.
- (5) Option account valuations  
In respect of each open *option* comprising the portfolio of the *fund* on the valuation date:
- (a) the *share*, *future*, index or other *investment* or asset involved;
  - (b) (unless the valuation statement follows the statement for the period in which the *option* was opened) the trade price and date for the opening transaction;
  - (c) the market price of the contract; and
  - (d) the exercise price of the contract.
- Options* account valuations may show an average trade price and market price in respect of an *option* series where a number of contracts within the same series have been purchased on behalf of the *fund*.



**18.5A Full-scope UK AIFMs and incoming EEA AIFM branches**

**Application**

**18.5A.1** **R** Subject to **■** COBS 18.5A.2R, this section applies to a *firm* which is:

- (1) a *full-scope UK AIFM* of:
  - (a) a *UK AIF*; and
  - (b) [deleted]
  - (c) (c)a *non-UK AIF*.
- (2) [deleted]

**18.5A.2** **R** The adequate information provisions in **■** COBS 18.5A.11R do not apply to a *full-scope UK AIFM* of:

- (1) an *LTIF*; or
- (2) an *unauthorised AIF* which is not a *collective investment scheme*.

**Application or modification of general COBS rules**

**18.5A.3** **R** A *firm* when it is carrying on *AIFM investment management functions*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Full-scope UK AIFM
1 (Application)	Applies
2.1.4R (AIFMs best interest rule)	Applies
2.2B (SRD requirements)	Applies
2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies

5.2 (E-commerce)	Applies
11.2 (Best execution for AIFMs and residual CIS operators)	Applies as modified by COBS 18.5A.8R
18.5A ( <i>Full-scope AIFMs</i> )	Applies as modified by COBS 18.5A.2R
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies (subject to COBS 18.5A.7R)

- 18.5A.4** G
- (1) For activities that are not *AIFM investment management functions*, the *COBS rules* apply under the general application rule, as modified in ■ COBS 1 Annex 1.
  - (2) This may include, for example, activities relating to the administration of the *AIF*, *marketing* and activities related to the assets of the *AIF*.

**General modifications**

- 18.5A.5** R Where *COBS rules* specified in the table in ■ COBS 18.5A.3R apply to a *firm* carrying on *AIFM investment management functions*, references to *customer* or *client* are to be construed as references to any *AIF* for which the *firm* is acting or intends to act.

**Research and inducements**

- 18.5A.6** R Subject to ■ COBS 18.5A.7R, a *firm* must comply with ■ COBS 18 Annex 1 (Research and inducements for collective portfolio managers) when executing orders, or placing orders with other entities for execution, that relate to *financial instruments* for, or on behalf of, the *fund*.

- 18.5A.7** R ■ COBS 18 Annex 1 does not apply in relation to an *AIF* which in accordance with its core investment policy:
- (1) does not generally invest in *financial instruments* that can be:
    - (a) registered in a *financial instruments* account opened in the books of a *depository*; or
    - (b) physically delivered to the *depository*; or
  - (2) generally invests in *issuers* or *non-listed companies* to potentially acquire control over such companies either individually or jointly with other *funds*.

**Modification of best execution**

- 18.5A.8** R Only the following provisions in ■ COBS 11.2 apply:
- (1) ■ COBS 11.2.5G;
  - (2) ■ COBS 11.2.17G;
  - (3) ■ COBS 11.2.23AR;
  - (4) ■ COBS 11.2.24R;

(5) ■ COBS 11.2.25R(1) and ■ COBS 11.2.26R, but only where an *AIF* itself has a governing body which can provide prior consent; and

(6) ■ COBS 11.2.27R, but only regarding the obligation on an *AIFM* to notify the *AIF* of any material changes to its order execution arrangements or execution policy.

**18.5A.9** **R** References to the service of *portfolio management* in ■ COBS 11.2 (Best execution for AIFMs and residual CIS operators) are to be read as references to the management by a *firm of financial instruments* held for or within the *AIF*.

### Distance marketing

**18.5A.10** **G** *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK*, ■ COBS 5.1 applies specific requirements for that activity.

### Adequate information

**18.5A.11** **R** A *full-scope UK AIFM* that markets an *unauthorised AIF* to a *retail client* must, in addition to providing the information in ■ FUND 3.2 (Investor information), take reasonable steps to offer and, if requested, provide to that potential investor information about the following items:

- (1) regulator – the *firm's* statutory status in accordance with ■ GEN 4 Annex 1R (Statutory status disclosure);
- (2) commencement – when and how the *firm* is appointed;
- (3) accounting – the arrangements for accounting to the *AIF* or investors in the *AIF* for any transaction effected;
- (4) termination method – how the appointment of the *firm* may be terminated;
- (5) complaints procedure – how to complain to the *firm* and a statement that the investors in the *AIF* may subsequently complain directly to the *Financial Ombudsman Service*;
- (6) compensation – whether or not compensation may be available from the *compensation scheme* should the *firm* be unable to meet its liabilities, and information about any other applicable compensation scheme; and for each applicable compensation scheme, the extent and level of cover and how further information can be obtained;
- (7) exchange rates – if a liability of the *AIF* in one currency is to be matched by an asset in a different currency, or if the services to be provided to the *firm* for the *AIF* may relate to an *investment* denominated in a currency other than the currency in which the *investments* of the *AIF* are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the portfolio of the *AIF*;

- (8) stabilised investments – if it is the case, that the *firm* will have the right under the *AIF documents* to effect transactions in *investments*, the prices of which may be the subject of stabilisation;
- (9) research and inducements – how the *firm* intends to pay for research. For example, whether the *firm* proposes to pay for *research* directly or to use a *research* payment account;
- (10) acting as principal – if it is the case, that the *firm* may act as *principal* in a transaction with the *AIF*;
- (11) underwriting commitments – if it is the case, that the *firm* may for the account of the portfolio of the *AIF* underwrite or sub-underwrite any issue or offer for sale of *securities*, and:
  - (a) whether there are any restrictions on the categories of *securities* which may be underwritten and, if so, what these restrictions are; and
  - (b) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;
- (12) investments in other funds – whether or not the *AIF* may invest in *funds* either managed or advised by the *firm* or by an *associate* of the *firm* or in a *fund* which is not a *regulated collective investment scheme*; and
- (13) investments in securities underwritten by the *firm* – whether or not the portfolio of the *AIF* may contain *securities* of which any issue or offer for sale was underwritten, managed or arranged by the *firm* or by an *associate* of the *firm* during the preceding 12 *months*.

**18.5A.12** G Where a *full-scope UK AIFM* is required to publish a *key information document*, only information that is additional to that contained in the *key information document* needs to be disclosed under ■ COBS 18.5A.11R.

#### **Prohibition on issue of bearer units**

**18.5A.13** G The effect of section 241A of the *Act* is that no bearer *units* in a *collective investment scheme* may be issued, converted or cancelled from 1 January 2021. However, the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346) contain transitional provisions for the conversion of bearer *units* to registered *units* and the cancellation of bearer *units* on or before 1 January 2022.

## 18.5B UCITS management companies

### Application

**18.5B.1** **R** This section applies to a *UCITS management company*.

### Application or modification of general COBS rules

**18.5B.2** **R** A firm when it is carrying on *scheme management activity*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other rule in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	UCITS management company
1 (Application)	Applies
2.1.1 (The client's best interests rule)	Applies
2.2B (SRD requirements)	Applies
2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)	Applies, as modified by COBS 2.3.1AR and COBS 2.3.2AR
2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1
2.4 (Agent as client and reliance on others)	Applies
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies
5.2 (E-commerce)	Applies
11.2B (Best execution for UCITS management companies)	Applies
11.3 (Client order handling)	Applies
11.7 (Personal account dealing)	Applies
11 Annex 1EU (Regulatory technical standard 28)	Applies as <i>rules</i>
18.5B (UCITS management companies)	Applies
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies

- 18.5B.3** G
- (1) For activities which are not *scheme management activity*, the *COBS rules* apply under the general application rule, as modified in ■ COBS 1 Annex 1.
  - (2) This may include, for example, activities relating to the administration and *marketing* of the *scheme*.

#### General modifications

- 18.5B.4** R Where *COBS rules* specified in the table in ■ COBS 18.5B.2R apply to a *firm* carrying on *scheme management activities*, the following modifications apply:

- (1) subject to (2), references to *customer* or *client* are to be construed as references to any *scheme* in respect of which the *firm* is acting or intends to act; and
- (2) references to the service of *portfolio management* in ■ COBS 11.3 (Client order handling) are to be read as references to *collective portfolio management*.

- 18.5B.5** G
- (1) ■ COBS 1.2 (Markets in Financial Instruments Directive) contains modifications to the text of the *MiFID Org Regulation* where this is applied as *rules* to *firms* that are not subject to those provisions directly.
  - (2) These modifications apply to the following sections that are applied in the table in ■ COBS 18.5B.2R:
    - (a) ■ COBS 11.3 (Client order handling); and
    - (b) ■ COBS 11 Annex 1EU (Regulatory technical standard 28).

#### Research and inducements

- 18.5B.6** R A *firm* must comply with ■ COBS 18 Annex 1 (Research and inducements for collective portfolio managers) when *executing* orders, or placing orders with other entities for execution, that relate to *financial instruments* for, or on behalf of, the *fund*.

#### Distance marketing

- 18.5B.7** G *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK*, ■ COBS 5.1 applies specific requirements for that activity.



## 18.6 Lloyd's

### Application

18.6.1 **R** This section applies to a *firm* when it carries on *Lloyd's market activities*.

### COBS rules that apply to Lloyd's market activities

18.6.2 **R** Only ■ COBS 3 (Client categorisation) and the *financial promotion rules* apply when a *firm* is carrying out *Lloyd's market activities*.

18.6.3 **G** *Firms* are reminded that *syndicate business plans* may be used in ways that bring them within the definition of a *financial promotion*.

### Definitions and modifications

18.6.4 **R** When a *firm* is carrying on *Lloyd's market activities*, any reference in *COBS* to the term:

- (1) *designated investment* is to be taken to include the following specified investments:
  - (a) the *underwriting capacity of a Lloyd's syndicate*;
  - (b) *membership of a Lloyd's syndicate*; and
  - (c) *rights to or interests in the specified investments* in (a) or (b);
- (2) *designated investment business* is to be taken to include the following *regulated activities*:
  - (a) *advising on syndicate participation at Lloyd's*;
  - (b) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*; and
  - (c) *agreeing to carry on the regulated activities* in (a) or (b).

### The Principles and Lloyd's market activities

18.6.5 **G** Whilst *COBS* has limited application to *Lloyd's market activities*, *firms* conducting *Lloyd's market activities* are reminded that they are required to comply with the *Principles*.

## 18.6A Insurance Special Purpose Vehicles (ISPVs)

### Application

18.6A.1 **R** This section applies to *UK ISPVs*.

### COBS rules that apply to insurance risk transformation and activities directly arising from insurance risk transformation

18.6A.2 **R** ■ COBS 3 applies (subject to ■ COBS 18.6A.3R) when a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*.

### Definitions and modifications

18.6A.3 **R** When a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*:

- (1) The general definition of *client* in ■ COBS 3.2.1R is modified as set out in ■ COBS 18.6A.3R(2) below.
- (2) Any reference to the term *client* is to be taken to include:
  - (a) a *person* to whom the *firm* provides, intends to provide or has provided a service in the course of carrying on activities directly arising from *insurance risk transformation* (including the offer of *investments* issued by the *firm*); or
  - (b) (in *DISP* only) a *person* who is holding or has held an *investment* issued by the *firm*.
- (3) ■ COBS 3.6.1R(2) does not apply. A client can be an *eligible counterparty* in relation to *insurance risk transformation* and activities directly arising from *insurance risk transformation*.

18.6A.4 **G** For the avoidance of doubt, the remainder of ■ COBS 3.2 and ■ COBS 3.6 applies.

### Communications with clients

18.6A.5 **R** Before an *investment* issued by an *ISPV* is sold to a *client* (that is not an *eligible counterparty*), the *ISPV* must ensure that the *client* is informed that compensation will not be available from the *FSCS* if the *ISPV* cannot meet its liabilities.

- 
- 18.6A.6 **R** A statement that compensation will not be available from the *FSCS* must be included in any brochure or other written communication by which an *ISPV* offers *investments* to *clients*.
- 18.6A.7 **G** For the avoidance of doubt, **■** COBS 18.6A.5R and **■** COBS 18.6A.6R do not exhaust or restrict the scope of *Principle 7*.

## 18.7 Depositories

**18.7.1** **R** Only the *COBS* provisions in the table apply to a *depository* when acting as such, when carrying on business which is not *MiFID* or *equivalent third country business*:

COBS	Description
2.1	Acting honestly, fairly and professionally
2.3	Inducements, except COBS 2.3.1 R (2)(b) and COBS 2.3.2 R
4	Communication to clients including financial promotions, but only in relation to <i>communicating</i> or <i>approving a financial promotion</i>
11.7	Personal account dealing

## 18.8A OPS firms

### Application

- 18.8A.1** **R** This section applies to an *OPS firm* when it carries on *OPS activity*:
- (1) from an establishment maintained by it in the *United Kingdom*; and
  - (2) which is not *MiFID*, *equivalent third country* or *optional exemption business*.

### Interpretation and general modifications

- 18.8A.2** **R** Where a *COBS rule* specified in this section applies to an *OPS firm*, the following modifications apply:
- (1) a reference to:
    - (a) "*client*" is to be construed as a reference to the *occupational pension scheme* or *welfare trust*, as the case may be, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of whom the relevant business is to be carried on; and
    - (b) "*investment firm*" is to be construed as a reference to an *OPS firm*;
  - (2) if an *OPS firm* is required by a *COBS rule* specified in this section to provide information to, or obtain consent from, a *client*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *occupational pension scheme* or *welfare trust* for whom that *firm* is acting; and
  - (3) subject to the modifications in **■** COBS 18.8A.6 R, **■** COBS 18.8A.15R(4) and **■** COBS 18.8A.16R(4), **■** COBS 1.2.3R (References in COBS to the MiFID Org Regulation) applies where a *COBS* provision marked "UK" applies to an *OPS firm*.

### General rule

- 18.8A.3** **R** Except as specified in this section, the provisions of *COBS* do not apply to an *OPS firm* in relation to its *OPS activity*.

### Client categorisation

- 18.8A.4** **R** **■** COBS 3 (Client categorisation) applies to an *OPS firm* but only for the purpose of determining the *client* categorisation of an *occupational pension scheme* or *welfare trust*.

**Inducements in relation to OPS activity that is advising on investments in relation to a financial instrument or providing portfolio management services**

18.8A.5

**R**

The COBS provisions in Table 1 apply:

- (1) to an OPS firm when it carries on OPS activity which is:
  - (a) advising on investments in relation to a financial instrument; or
  - (b) providing portfolio management services; and
- (2) as modified by ■ COBS 18.8A.6R.

Table 1	
COBS	Description
2.1.1R	The client's best interests rule.
2.3A.16R except (1)	Inducements relating to the provision of independent advice and portfolio management services to retail clients outside the United Kingdom or to professional clients.
2.3A.18G	Guidance relating to fees, commission, and non-monetary benefits paid or provided by a person on behalf of a client.
2.3A.19R	Acceptable minor non-monetary benefits.
2.3A.20G	Guidance about determining whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service provided to the client.
2.3A.21G	Guidance about when a non-monetary benefit might impair compliance with the duty to act in the client's best interest.
2.3A.22G	Guidance relating to acceptable minor non-monetary benefits.
2.3A.30G	Guidance on inducements.
2.3A.31G	Guidance on inducements.

**Modification of inducement rules specified in Table 1**

18.8A.6

**R**

Where a provision of COBS specified in Table 1 applies, a reference to "investment service" is to be construed as a reference to the relevant OPS activity falling within the scope of ■ COBS 18.8A.5R.

**Inducements in relation to OPS activity not within the scope of COBS 18.8A.5R**

18.8A.7

**R**

The COBS provisions in Table 2 apply:

- (1) to an OPS firm when it carries on any OPS activity other than that to which ■ COBS 18.8A.5R applies; and
- (2) as modified by ■ COBS 18.8A.8R.

Table 2	
COBS	Description
2.1.1R	The client's best interests rule
2.3.1R, other than (2)(b)(i) to (iii)	Rule on inducements
2.3.2R	Disclosure obligation

### Modification of inducement rules specified in Table 2

- 18.8A.8** **R** In **■ COBS 2.3.1R**, a reference to "*designated investment business*" is to be construed as a reference to any *OPS activity* that does not fall within the scope of **■ COBS 18.8A.5R**.

### Inducements and research

- 18.8A.9** **R** The provisions in **■ COBS 2.3B** (Inducements and research) apply to an *OPS firm* with the following modifications:
- (1) **■ COBS 2.3B.1R** does not apply;
  - (2) for the *guidance* in **■ COBS 2.3B.2G** substitute the following *guidance*:
 

"(1) An *OPS firm* is prohibited from receiving inducements (other than acceptable minor non-monetary benefits) in relation to *OPS activity* falling within the scope of **■ COBS 18.8A.5R**. Compliance with **■ COBS 2.3B** (Inducements and research) allows such a *firm* to receive third party *research* (relating to *OPS activity* falling within the scope of **■ COBS 18.8A.5R**) without breaching the prohibition in **■ COBS 2.3A.16R**.

(2) An *OPS firm* may receive third party *research* in relation to *OPS activity* falling within the scope of **■ COBS 18.8A.7R** without subjecting that *research* to an assessment under the inducement *rule* in **■ COBS 2.3.1R** if the *research* is acquired in accordance with **■ COBS 2.3B** as such *research* will not constitute an inducement.";
  - (3) the reference in **■ COBS 2.3B.3R** to "**■ COBS 2.3A.5R**" should be construed as a reference to **■ COBS 2.3.1R** (Rule on inducements);
  - (4) in relation to an *OPS firm* carrying out *OPS activity* falling within the scope of **■ COBS 18.8A.5R**, for the *guidance* in **■ COBS 2.3B.22G** substitute:
 

"An *OPS firm* should also consider whether the goods or services it is looking to receive are acceptable minor non-monetary benefits under **■ COBS 2.3A.19R** or **■ COBS 2.3A.22G**, which can be received without breaching the inducement *rule* in **■ COBS 2.3A.16R(2)**.";
  - (5) **■ COBS 2.3B.22G** does not apply to an *OPS firm* that is carrying on *OPS activity* falling within the scope of **■ COBS 18.8A.7R**; and
  - (6) a reference to "*ancillary services*" or "*investment services*" in **■ COBS 2.3B.3R**, **■ COBS 2.3B.4R** and **■ COBS 2.3B.5R** is to be construed as a reference to, as applicable, either:
    - (a) *OPS activity* that falls within the scope of **■ COBS 18.8A.5R**; or
    - (b) *OPS activity* that falls within the scope of **■ COBS 18.8A.7R**.

### Suitability

18.8A.10 **R**

The COBS provisions in Table 3 apply:

- (1) to an *OPS firm* when it carries on *OPS activity* which is:
  - (a) making a *personal recommendation* in relation to a *designated investment*; or
  - (b) *managing investments*; and
- (2) as modified by **COBS 18.8A.11R**.

Table 3	
COBS	Description
2.1.1R	Client's best interests rule
9.2.1R	Assessing suitability: the obligations
9.2.2R	Assessing suitability: the obligations
9.2.3R	Assessing suitability: the obligations
9.2.4R	Assessing suitability: the obligations
9.2.5R	Reliance on information
9.2.6R	Insufficient information
9.2.7G	Insufficient information
9.3.1G	Guidance on assessing suitability
9.3.2G	Churning and switching
9.5.1G	Record keeping and retention periods for suitability records

### Modification of suitability rules

18.8A.11 **R**

In **COBS 9.2.7G** for that part which states,

"...The *firm* should also bear in mind the *client's best interests rule* and any other obligation it may have under the *rules* relating to appropriateness when providing the different service (see **COBS 10**, Appropriateness (for non-advised services)) and **COBS 10A**, Appropriateness (for non-advised services) (MiFID provisions)).",

substitute,

"The *firm* should bear in mind any other obligation it may have under the *rules* relating to the different service being requested by the *client*."

### Professional clients

18.8A.12 **R**

- (1) If an *OPS firm* makes a *personal recommendation* to a *per se professional client* the *firm* is entitled to assume that the *client* is able financially to bear any related investment risks consistent with the *client's* investment objectives for the purposes of **COBS 9.2.2R(1)(b)**.
- (2) If an *OPS firm* makes a *personal recommendation* or *manages investments* for a *professional client* it is entitled to assume that, in relation to the products, transactions and services for which the *professional client* is so classified, the *client* has the necessary level of experience and knowledge for the purposes of **COBS 9.2.2R(1)(c)**.



### Best execution

- 18.8A.13** **R** The provisions in **■ COBS 11.2A** (Best execution – MiFID provisions) apply:
- (1) to an *OPS firm* when it carries on *OPS activity* which is *executing* an order for a *client* in relation to a *financial instrument*; and
  - (2) as modified by **■ COBS 18.8A.15R**.

- 18.8A.14** **R** The provisions in **■ COBS 11.2A** (Best execution – MiFID provisions) marked “UK” and **■ COBS 11 Annex 1UK** (Regulatory Technical Standard 28) apply to an *OPS firm* to which (1) applies as if they were *rules*.

### Modification of best execution rules

- 18.8A.15** **R**
- (1) The reference to the inducement requirements in **■ COBS 11.2A.19R** is to be construed as a reference to, as applicable, the inducement requirements applying to an *OPS firm* pursuant to either:
    - (a) **■ COBS 18.8A.5R**; or
    - (b) **■ COBS 18.8A.7R**.
  - (2) The requirement in **■ COBS 11.2A.34UK** (see article 65(6) of the *MiFID Org Regulation*) to make public for each class of *financial instruments*:
    - (a) the top five *investment firms* used by an *OPS firm* to *execute client orders*; and
    - (b) information on the quality of execution obtained, applies in accordance with (3).
  - (3) The information to be made public under (2) must:
    - (a) be published for the first time no later than 30 April 2019 and then annually no later than 30 April of each subsequent year; and
    - (b) relate to the calendar year immediately preceding the year in which the information is being made public.
  - (4) In **■ COBS 11.2A**, a reference to:
    - (a) “*investment service*” is to be construed as a reference to any *OPS activity* falling within the scope of **■ COBS 18.8A.13R**;
    - (b) “*portfolio management*” in **■ COBS 11.2A.34UK** (see article 65(1) of the *MiFID Org Regulation*) is to be construed as a reference to *OPS activity* falling within the scope of **■ COBS 18.8A.13R** and which involves the *OPS firm* placing orders with other entities for execution that result from decisions by the *OPS firm* to deal in *financial instruments* on behalf of its *client*; and
    - (c) “*reception and transmission of orders*” is to be construed as a reference to *OPS activity* falling within the scope of **■ COBS 18.8A.13R** and which involves the transmission of *client orders* to other entities for execution.

**Client order handling**

- 18.8A.16** **R**
- (1) The *COBS* provisions in **■ COBS 11.3** (Client order handling) apply to an *OPS firm*, as modified by this rule.
  - (2) The provisions in **■ COBS 11.3** (Client order handling) marked ““UK” apply to an *OPS firm* as if they were rules.
  - (3) A rule in **■ COBS 11.3** which applies only to a *UCITS management company* or a *management company* does not apply to an *OPS firm*.
  - (4) A reference to “*financial instrument*” is to be construed as a reference to a *designated investment* (other than a *P2P agreement*).

**Personal account dealing**

- 18.8A.17** **R**
- The provisions in **■ COBS 11.7** (Personal account dealing), other than **■ COBS 11.7.2R(1)**, apply to an *OPS firm*.

**Client reporting**

- 18.8A.18** **R**
- (1) The provisions in **■ COBS 16.2** (Occasional reporting) and **■ COBS 16.3** (Periodic reporting) apply to an *OPS firm*, as modified by this rule.
  - (2) In **■ COBS 16.2.6R** (Special cases) add the following paragraph after **■ COBS 16.2.6R(3)**:
 

“(4) the *firm* is an *OPS firm* and carries on *OPS activity* for an *occupational pension scheme* trustee who is a *professional client* and who is habitually resident in the *United Kingdom*. In this case, the *OPS firm* may rely upon the exceptions in **■ COBS 16.2.1R(2)** or **■ COBS 16.2.6R(1)** only if it provides a *periodic statement* to the *professional client* containing the information required by **■ COBS 18.8A.18R(3)**.”.
  - (3) Where an *OPS firm* carries on *OPS activity* and is obliged to provide a *periodic statement*, the *periodic statement* must contain the information in the table below.

Information to be included in a periodic statement provided by an *OPS firm* conducting *OPS activity*

(a)	<p>Investment objectives</p> <p>A statement of any investment objectives governing the mandate of the portfolio of the <i>occupational pension scheme</i> as at the closing and starting date of the <i>periodic statement</i>.</p>
(b)	<p>Details of any asset loaned or charged</p> <p>(i) a summary of any <i>investments</i> that were, at the closing date, lent to a third party and any <i>investments</i> that were at that date charged to secure borrowings made on behalf of the portfolio; and</p> <p>(ii) the aggregate of any interest payments made and income re</p>

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

(c)	<p>ceived during the account period in respect of loans or borrowings made during that period and a comparison with the previous period.</p> <p><i>Transactions</i> and changes in composition</p> <p>(i) a summary of the <i>transactions</i> entered into for the portfolio during the period and a comparison with the previous period;</p> <p>(ii) the aggregate of <i>money</i> and a summary of all <i>investments</i> transferred into and out of the portfolio during the period; and</p> <p>(iii) the aggregate of any interest payments, dividends and other benefits received by the <i>firm</i> for the portfolio during that period and a comparison with the previous period.</p>
(d)	<p><i>Charges and remuneration</i></p> <p>If not previously advised in writing, a statement for the period of account:</p> <p>(i) of the aggregate <i>charges</i> of the <i>firm</i> and its <i>associates</i>; and</p> <p>(ii) of any <i>remuneration</i> received by the <i>firm</i> or its <i>associates</i> or both from a third party in respect of the <i>transactions</i> entered into, or any other services provided, for the portfolio.</p>
(e)	<p>Movement in value of portfolio</p> <p>A statement of the difference between the value of the portfolio at the closing date of the period of account and its value at the starting date, having regard, during the period of account, to:</p> <p>(i) the aggregate of assets received from the <i>occupational pension scheme</i> and added to the portfolio;</p> <p>(ii) the aggregate of the value of assets transferred, or of amounts paid, to the <i>client</i>;</p> <p>(iii) the aggregate income received on behalf of the <i>client</i> in respect of the portfolio; and</p> <p>(iv) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio.</p>

**Record keeping: general**

- 18.8A.19 **G** An *OPS firm* should ensure that it keeps a record of its compliance with the requirements in this section in accordance with ■ SYSC 9.1.1R (General requirements) which contains general record-keeping requirements that apply to an *OPS firm*.

**Record keeping: suitability**

- 18.8A.20 **R**
- (1) An *OPS firm* must retain its records relating to suitability for a minimum period of three years.
  - (2) The requirement in (1) does not apply if the *client* does not proceed with the recommendation.

**Record keeping: client orders and transactions**

- 18.8A.21 **R** The *rules* in ■ COBS 18 Annex 2 (Record keeping: client orders and transactions) apply to an *OPS firm*.

 18.9 ICVCs

- 18.9.1 **R** (1) The *financial promotion rules* in COBS apply to an ICVC, except that COBS 4.13 (UCITS) applies only to an ICVC that is a UCITS scheme.
- (2) ■ COBS 14.2 (Providing product information to clients) applies to an ICVC that is a UCITS scheme.
- (3) ■ COBS 2.2B (SRD requirements) applies to an ICVC that is a UCITS scheme without a separate *management company*.
- 18.9.2 **G** Firms should note that the operator of an ICVC when it is undertaking *scheme management activity* will be subject to:
- (1) ■ COBS 18.5.2R if the operator is a *small authorised UK AIFM*; or
- (2) ■ COBS 18.5A.3R if the operator is a *full-scope UK AIFM*; or
- (3) ■ COBS 18.5B.2R if the operator is a *UCITS management company*.

## 18.10 Service companies

**18.10.1** **R** The *COBS* provisions in the table apply to a *service company*:

COBS	Description
4	Communications to clients, but only in relation to <i>communicating</i> or <i>approving a financial promotion</i>
5.2	E-Commerce
12.4	Research recommendations: required disclosures

**18.10.2** **R** [deleted]

## 18.11 Authorised professional firms

**18.11.1** **R** *COBS* applies to an *authorised professional firm*, except that its application in relation to *non-mainstream regulated activities* and *financial promotion* is modified as set out below.

**18.11.1A** **G** In certain respects, the application of *COBS* to an *authorised professional firm* will be determined by the *firm's* status as a *MiFID investment firm*, a *MiFID optional exemption firm* or a *firm* to which *MiFID* does not apply.

**18.11.2** **R** *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:

- (1) the *fair, clear and not misleading rule* applies;
- (2) the *financial promotion rules* apply as modified below;
- (3) the *rules* in the following parts of *COBS* which implemented the *IDD* apply in relation to *insurance distribution activities*:
  - (a) ■ **COBS 2.1.1R**, ■ **COBS 2.2A** and ■ **COBS 2.3A** (Conduct of business obligations);
  - (b) ■ **COBS 4** (Communicating with clients, including financial promotions);
  - (c) ■ **COBS 6.1ZA** (Information about the firm and compensation information (MiFID and insurance distribution provisions));
  - (d) ■ **COBS 7** (Insurance distribution);
  - (e) ■ **COBS 8** (Client agreements);
  - (f) ■ **COBS 9** (Suitability (including basic advice) (other than MiFID and insurance-based investment products provisions)) and ■ **COBS 9A** (Suitability (MiFID and insurance-based investment products provisions));
  - (g) ■ **COBS 10A** (Appropriateness (for non-advised services));
  - (h) ■ **COBS 14.2** (Providing product information to clients); and
  - (i) ■ **COBS 16A.2** (General client reporting and record keeping requirements),

but only if the *designated professional body* of the *firm* does not have rules approved by the *FCA* under section 332(5) of the *Act* that implemented articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the *IDD* and that apply to the *firm*;

- (4) ■ COBS 8.1.3 R (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and
- (5) ■ COBS 5.2 (E-commerce) applies.
- 18.11.2A** **G** For ■ COBS 18.11.2R(3) if a *rule* implemented a requirement of the *IDD*, a note (“**Note:**”) follows the *rule* indicating which provision was being implemented.
- 18.11.3** **R** The *financial promotion rules* do not apply to an *authorised professional firm* in relation to the *communication of a financial promotion* if:
- (1) the *firm's* main business is the practice of its profession (see IPRU(INV) 2.1.2R(3));
  - (2) the *financial promotion* is made for the purposes of and incidental to the promotion or provision by the *firm* of its professional services or its *non-mainstream regulated activities*; and
  - (3) the *financial promotion* is not *communicated* on behalf of another *person* who would not be able lawfully to *communicate* the *financial promotion* if he were acting in the course of business;
- however, a *firm* may use the exemptions for promoting *unregulated collective investment schemes* in ■ COBS 4 (Communicating with clients, including financial promotions) if it wishes.
- 18.11.4** **G** The *rules on approving financial promotions* continue to apply.



## 18.12 Operating an electronic system in relation to lending

### Application

- 18.12.1 **R** This section applies to *an operator of an electronic system in relation to lending*, but only in relation to a *person* becoming a lender under a *P2P agreement*.
- 18.12.2 **R** This section does not apply in relation to a current account agreement where:
- (1) there is a possibility that the account holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and
  - (2) if the account holder did so, this would be a *P2P agreement* (overrunning).

### Purpose

- 18.12.3 **G** The purpose of this chapter is to ensure that, where applicable, a *firm*:
- prices and values *P2P agreements* fairly and appropriately;
  - will prevent lenders being exposed to risk outside of the parameters advertised at the time of investment;
  - has a reasonable basis to conclude that a *target rate* can be reasonably achieved; and
  - can support the statements made in its disclosures and financial promotions.

### Interpretation

- 18.12.4 **R** In the remainder of this section:
- (1) references to a *P2P agreement* include *non-P2P agreements* included in a *P2P portfolio*;
  - (2) unless the context otherwise requires, references to “lender” also include a prospective lender;

- (3) a *firm* is treated as having determined the *price* of a *P2P agreement* in cases other than where the lender and the borrower have entered into a genuine negotiation to determine the *price* of that *P2P agreement*; and
- (4) references to repayment refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a *P2P agreement*).

### Credit risk assessment

18.12.5 **R** Where a *firm* determines the *price* of a *P2P agreement*, it must undertake a reasonable assessment of the credit risk of the borrower before the *P2P agreement* is made.

18.12.6 **R** A *firm* must base its *credit risk assessment* on sufficient information:

- (1) of which it is aware at the time the *credit risk assessment* is carried out;
- (2) obtained, where appropriate, from the borrower, and, where necessary, any other relevant sources of information.

### The subject matter of the credit risk assessment

18.12.7 **R** The *firm* must consider the risk that the borrower will not make one or more repayments under the *P2P agreement* by the due date.

### Scope, extent and proportionality of the credit risk assessment

18.12.8 **R**

- (1) The extent and scope of the *credit risk assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one and based on sufficient information, is dependent upon, and proportionate to, the individual circumstances of each case.
- (2) The *firm* must consider:
  - (a) the types of information to use in the *credit risk assessment*;
  - (b) the content and level of detail of the information to use;
  - (c) whether the information in the *firm's* possession is sufficient;
  - (d) whether and to what extent to obtain additional information from the borrower;
  - (e) whether and to what extent to obtain information from any other sources;
  - (f) whether and to what extent to verify the accuracy of the information that is used; and
  - (g) the degree of evaluation and analysis of the information that is used,
 having regard to the factors listed in (3) where applicable to the agreement.

- (3) The factors to which the *firm* must have regard when complying with (2) and deciding what steps are needed to make the *credit risk assessment* a reasonable one include each of the following where applicable to the agreement:
  - (a) the type of *credit*;
  - (b) the amount of the *credit* or the *credit limit*;
  - (c) the duration (or likely duration) of the *credit*;
  - (d) the frequency of the repayments;
  - (e) the amount of the repayments;
  - (f) the annual percentage rate of charge; and
  - (f) any other costs, including any charge for non-compliance with the agreement, which will or may be payable by or on behalf of the borrower in connection with the agreement.

18.12.9 **G** The *firm* may have regard, where appropriate, to information obtained:

- (1) in the course of previous dealings with the borrower but should consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it;
- (2) as part of conducting a *credit-worthiness assessment* in relation to a *P2P agreement* in accordance with ■ CONC 5.5A; or
- (3) as part of assessing affordability in relation to a *P2P agreement* comprising a *home finance transaction*, in accordance with ■ MCOB 11 as modified by ■ MCOB 15.

### Policies and procedures for credit risk assessment

18.12.10 **R** A *firm* must:

- (1) establish, implement and maintain clear and effective policies and procedures:
  - (a) to enable it to carry out *credit risk assessments*; and
  - (b) setting out the principal factors it will take into account in carrying out *credit risk assessments*;
- (2) set out in writing the policies and procedures in (1), and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;
- (3) assess and periodically review:
  - (a) the effectiveness of the policies and procedures in (1); and
  - (b) the *firm's* compliance with those policies and procedures and with its obligations under ■ COBS 18.12.5R to ■ 18.12.8R;
- (4) following the review in (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;

- (5) maintain a record of each transaction where a *P2P agreement* is entered into sufficient to demonstrate that:
  - (a) a *credit risk assessment* was carried out where required; and
  - (b) the *credit risk assessment* was reasonable and was undertaken in accordance with ■ COBS 18.12.5R to ■ 18.12.8R, and in each case to enable the *FCA* to monitor the *firm's* compliance with its obligations under ■ COBS 18.12.5R to ■ 18.12.8R; and
- (6) (other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

### Pricing, allocation and portfolio composition

- 18.12.11 **R** Where a *firm* determines the *price* of a *P2P agreement* it must ensure that the *price* is fair and appropriate.
- 18.12.12 **R** To determine a fair and appropriate *price* for a *P2P agreement* the *firm* must at least ensure:
- (1) the *price* is reflective of the risk profile of the loan; and
  - (2) the *firm* has taken into account:
    - (a) the time value of money; and
    - (b) the credit spread of the *P2P agreement*.
- 18.12.13 **R** Where a *firm* selects which *P2P agreements* to facilitate for a lender, it must facilitate only those *P2P agreements* which are in line with the disclosures made pursuant to ■ COBS 18.12.27R.
- 18.12.14 **R** Where a *firm* is assembling or managing a *P2P portfolio*, it must ensure that it includes in that *P2P portfolio* only those *P2P agreements* it has determined with reasonable certainty will enable the lender to achieve the *target rate*.
- 18.12.15 **G** To be able to comply with ■ COBS 18.12.14R, a *firm* should use appropriate data and robust modelling. The data may be the *firm's* own or may be sourced from third parties. Modelling could include the *firm's credit risk assessment* of all borrowers under *P2P agreements* included in the *P2P portfolio*, taking into account the expected losses and the variability of losses through the cycle, and the *price* of such agreements as calculated in accordance with ■ COBS 18.12.12R.
- 18.12.16 **R** Where a *firm* determines the *price* of a *P2P agreement* it must review the valuation of each *P2P agreement* in at least the following circumstances:
- (1) when the *P2P agreement* is originated;
  - (2) where the *firm* considers that the borrower is unlikely to pay its obligations under the *P2P agreement* in full, without the *firm*

enforcing any relevant security interest or taking other steps with analogous effect;

- (3) following a *default*; and
- (4) where the *firm* is facilitating an exit for a lender before the maturity date of the *P2P agreement*.

**18.12.17** **R** Where a *firm* that determines the *price* of *P2P agreements* is facilitating an exit for a lender before the maturity date of a *P2P agreement*, the *firm* must ensure that the price offered for exiting the *P2P agreement* is fair and appropriate.

### Risk management framework

**18.12.18** **R**

- (1) Where any of **COBS 18.12.11R** to **18.12.17R** apply, a *firm* must have and use a *risk management framework* that is designed to achieve compliance with those *rules*.
- (2) The *firm's risk management framework* must at least:
  - (a) be appropriate to the nature, scale and complexity of its business;
  - (b) take into account any *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability under *MCOB*;
  - (c) categorise *P2P agreements* by their risk, taking into account the probability of default and the loss given default; and
  - (d) set out the circumstances in which the *firm* will review the valuation of each *P2P agreement*.
- (3) The *firm* must set out in writing the *risk management framework*, and have it approved by its *governing body* or *senior personnel*.

**18.12.19** **G** Where **COBS 18.12.11R** to **18.12.17R** do not apply to a *firm*, it would be good practice for the *firm* to consider whether, depending on its business model, it should apply the requirements in **COBS 18.12.18R(1)** to **(3)**.

### Monitoring of the risk management framework

**18.12.20** **R** A *firm* with a *risk management framework* must:

- (1) assess, monitor and periodically review the adequacy and effectiveness of the *risk management framework*, including by assessing outcomes against expectations;
- (2) pursuant to (1), take appropriate measures to address any deficiencies in the *risk management framework*;
- (3) maintain a record of each transaction where it has used the *risk management framework* to facilitate a *P2P agreement* sufficient to demonstrate that:
  - (a) the *price* of the *P2P agreement* was fair and appropriate in line with the *risk management framework*;

- (b) where the *firm* selected which *P2P agreements* to facilitate for a lender, that its selection was in line with the *risk management framework*;
  - (c) any inclusion in a *P2P portfolio* was in line with the *risk management framework*,
- and in each case to enable the *FCA* to monitor the *firm's* compliance with its obligations regarding the *risk management framework*;
- (4) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (3); and
  - (5) allocate to an *approved person* overall responsibility within the *firm* for the establishment and maintenance of an effective *risk management framework* and record that allocation.

#### Publication of an outcomes statement

18.12.21 **R** Where a *firm* determines the *price* of *P2P agreements* in any financial year of the *firm*, it must publish an *outcomes statement* within four *months* of the end of each financial year.

18.12.22 **R** A *firm* must ensure that each *outcomes statement* remains publicly available for at least 10 years from publication.

#### Content of an outcomes statement

18.12.23 **R** An *outcomes statement* must include, as applicable, for the financial year of the *firm*:

- (1) the expected and actual *default rate* of all *P2P agreements* the *firm* has facilitated by risk category, by reference to the risk categories set out in the *risk management framework*, 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*; and
- (3) where the *firm* offered a *target rate*, the actual return achieved.

#### Information: role of an operator of an electronic system in relation to lending

18.12.24 **R** A *firm* must provide to a lender a description of its role in facilitating *P2P agreements*. That description must include:

- (1) the nature and extent of due diligence the *firm* undertakes in respect of borrowers;
- (2) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the *firm* considers the borrower eligible for a *P2P agreement*;

- (3) whether the *firm* will play a role in determining the *price* of a *P2P agreement* and, if so, what role;
- (4) where lenders do not have the choice to enter into specific *P2P agreements*, what role the *firm* will play in selecting *P2P agreements* for the lender;
- (5) where a *firm* offers a *P2P portfolio* to lenders, what role it will play in assembling or managing that *P2P portfolio*;
- (6) an explanation of the *firm's* procedure for dealing with a loan in late payment or default;
- (7) an explanation of how any tax liability for lenders arising from investment in *P2P agreements* will be calculated;
- (8) whether the *firm* will play a role in facilitating a secondary market in *P2P agreements* and, if so, what role, including:
  - (a) the procedure for a lender to access their money before the term of the *P2P agreement* has expired and the risk to their investment of doing so; and
  - (b) whether the *firm* displays *P2P agreements* that lenders wish to exit and that other lenders may choose to enter into; or
  - (c) whether the *firm* decides if the *P2P agreement* should be transferred to another lender without involving either lender in that decision.

#### Information: Financial Services Compensation Scheme

- 18.12.25 **R** A *firm* must provide confirmation to a lender that there is no recourse to the Financial Services Compensation Scheme.

#### Information: P2P agreements where the lender selects the agreements

- 18.12.26 **R** Where a lender has the choice to enter into specific *P2P agreements*, a *firm* must provide the lender with at least the following information about each *P2P agreement*:

- (1) where the *firm* determines the *price* of *P2P agreements*, the *price* of the *P2P agreement*;
- (2) where not provided under (1), the annual percentage rate that will be paid by the borrower in respect of that *P2P agreement*, where applicable to that agreement;
- (3) when the *P2P agreement* is due to mature;
- (4) the frequency of the repayments to be made by the borrower;
- (5) the amounts of the repayments to be made by the borrower;
- (6) the total amount payable by the borrower;

- (7) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;
- (8) where the *firm* determines the *price of P2P agreements*, details of the *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability under *MCOB* carried out;
- (9) whether the *P2P agreement* is backed by an asset (for example, secured against property developments) and if so, details of that asset;
- (10) fees to be paid by the borrower or the lender, including any deduction from the interest to be paid by the borrower;
- (11) where the *firm* determines the *price of P2P agreements*, the risk categorisation of that *P2P agreement* and an explanation of that risk categorisation, by reference to the risk categories set out in the *risk management framework*; and
- (12) where any of the terms in respect of which information must be provided under sub-paragraphs (1) to (7) is set by auction, a description of the auction process and of how those terms will be determined.

#### Information: P2P agreements where the firm selects the agreements

18.12.27 **R**

Where a *firm* selects which *P2P agreements* to facilitate for a lender, including where a *firm* offers a *P2P portfolio* to a lender, the *firm* must provide the lender with the following information about the *P2P agreements* it may facilitate for the lender:

- (1) the minimum and maximum interest rate that will be payable under any *P2P agreement* that may be facilitated for the lender;
- (2) the minimum and maximum maturity date of any *P2P agreement* that may be facilitated for the lender;
- (3) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;
- (4) fees to be paid by the borrower or the lender, including any deduction from the interest to be paid by the borrower; and
- (5) the range and distribution of risk categories that the *P2P agreements* may fall into and an explanation of those risk categories by reference to the risk categories set out in the *risk management framework*.

#### Information concerning platform failure

18.12.28 **R**

- (1) A *firm* must notify each lender of the *firm's* arrangements made under **SYSC 4.1.8AR** to ensure that *P2P agreements* facilitated by it will continue to be managed and administered in accordance with the contract terms between the *firm* and the lender.
- (2) Where a *firm's* arrangements made under **SYSC 4.1.8AR** include particular terms in its contracts with lenders, or include obtaining



particular prior consents from lenders, the *firm* must clearly identify these arrangements and explain how they operate.

(3) Where a *firm's* arrangements made under ■ SYSC 4.1.8AR involve another *person* taking over the management and administration of *P2P agreements* if the *firm* ceases to operate the electronic system in relation to lending, the notification must inform lenders of:

- (a) the identity of the *person* with which the arrangements have been made;
- (b) how that *person* will hold the lenders' money; and
- (c) whether that *person* is authorised by the FCA and, if it is, which relevant *Part 4A permissions* it holds.

(4) A *firm* must also explain to each lender the particular risks to the management and administration of *P2P agreements* in the event of its own *failure*, including:

the possibility that *P2P agreements* may cease to be managed and administered before they mature;

the possibility that any *person* involved in the continued management and administration of *P2P agreements* after the *firm* fails may not be subject to the same regulatory regime and requirements as the *firm*, and the resulting possibility that regulatory protections may be reduced or no longer available; and

the likelihood that the majority of balances due to the lender are those due from borrowers rather than from the *firm* itself, so if the *firm* fails a lender's entitlement to any *client money* held by the *firm* would not include those balances that the *firm* has not yet received from borrowers.

### The timing rules

18.12.29 **R**

- (1) The information to be provided in accordance with ■ COBS 18.12.24R to ■ 18.12.25R and ■ 18.12.27R to ■ 18.12.28R must be provided in good time before a *firm* carries on the relevant business for a lender.
- (2) The information to be provided in accordance with ■ COBS 18.12.26R must be provided each time before a *firm* facilitates a person becoming a lender under a *P2P agreement*, and in good time before doing so.
- (3) Where any of the terms in respect of which information must be provided under ■ COBS 18.12.26R(1) to ■ (7) are set by auction, that information must be provided as soon as reasonably practicable after those terms have been set as a result of the auction.

### Keeping the client up to date

18.12.30 **R**

- (1) A *firm* must notify a lender in good time about any material change to the information provided under the *rules* in ■ COBS 18.12.24R and ■ 18.12.28R.
- (2) The notification in (1) must be given in a *durable medium* if the information to which it relates was given in a *durable medium*.

**Ongoing disclosures**18.12.31 **R**

A *firm* must ensure that, at any point in time, a lender is able to access details of each *P2P agreement* they have entered into which was facilitated by that *firm*, including:

- (1) the *price* of the *P2P agreement*;
- (2) where not provided under (1), the annual percentage rate that will be paid by the borrower in respect of that *P2P agreement*, where applicable to that agreement;
- (3) the outstanding capital and interest payments in respect of that *P2P agreement*;
- (4) when the *P2P agreement* is due to mature;
- (5) any fees paid in respect of that *P2P agreement* by the lender or the borrower;
- (6) if the *firm* has carried out a valuation of the *P2P agreement*:
  - (a) the most recent valuation;
  - (b) the valuation date; and
  - (c) an explanation of why the *firm* conducted the valuation;
- (7) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;
- (8) where the *firm* determines the price of *P2P agreements*, details of the *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability carried out under *MCOB*;
- (9) whether the *P2P agreement* is backed by an asset (for example, secured against property developments) and if so, details of that asset;
- (10) where the *firm*:
  - (a) determines the *price* of *P2P agreements*;
  - (b) selects which *P2P agreements* to facilitate for a lender; or
  - (b) offers a *target rate*,the risk categorisation of that *P2P agreement* and an explanation of that risk categorisation, by reference to the risk categories set out in the *risk management framework*;
- (11) whether the *firm* considers that the borrower is unlikely to pay its obligations under the *P2P agreement* in full without the *firm* enforcing any relevant security interest or taking other steps with analogous effect and, if so, information to that effect; and
- (12) whether a *default* by the borrower under a *P2P agreement* has occurred and, if so, information to that effect.

**Information: form**

- 18.12.32 **R** The *documents* and information provided in accordance with **COBS 18.12.24R** to **18.12.28R** and **COBS 18.12.31R** must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

**Contingency funds: standardised risk warning**

- 18.12.33 **R**
- (1) In addition to any other risk warnings that must be given by a *firm*, a *firm* must provide the following risk warning to a lender when it offers a *contingency fund*, modified as necessary to reflect the terminology used by the *firm* to refer to a *contingency fund*:
 

**“The contingency fund we offer does not give you a right to a payment so you may not receive a pay-out even if you suffer loss. The fund has absolute discretion as to the amount that may be paid, including making no payment at all. Therefore, investors should not rely on possible pay-outs from the contingency fund when considering whether or how much to invest.”**
  - (2) The *firm* must provide the risk warning in a prominent place on every page of each website and mobile application of the *firm* available to lenders containing any reference to a *contingency fund*.
  - (3) Where the lender has not approached the *firm* through a website or mobile application, the risk warning must be provided in a *durable medium* in good time before the *firm* carries on any business for that lender.

- 18.12.34 **R** The standardised risk warning must be:

- (1) prominent; and
- (2) contained within its own border and with bold text as indicated.

**Contingency funds: published policy**

- 18.12.35 **R**
- (1) A *firm* which offers a *contingency fund* to lenders must have a *contingency fund policy*.
  - (2) The *contingency fund policy* must contain the following information:
    - (a) an explanation of the source of the money paid into the fund;
    - (b) an explanation of how the fund is governed;
    - (c) an explanation of who the money belongs to;
    - (d) the considerations the fund operator takes into account when deciding whether or how to exercise its discretion to pay out from the fund, including examples. This should include:
      - (i) whether or not the fund has sufficient money to pay; and
      - (ii) that the fund operator has absolute discretion in any event not to pay or to decide the amount of the payment;

(e) an explanation of the process for considering whether to make a discretionary payment from the fund; and a description of how that money will be treated in the event of the *firm's* insolvency.

(f) The *contingency fund policy* must be provided on every page of each website and mobile application of the *firm* available to lenders and must be:

(3) The *contingency fund policy* must be provided on each website and mobile application of the *firm* available to lenders and must be:

(a) prominent;

(b) in an unrestricted part of the website or mobile application; and

(c) accessible via a link contained in the standardised risk warning in ■ COBS 18.12.33R.

(4) Where the lender has not approached the *firm* through a website or mobile application this information must be provided in a *durable medium* in good time before the *firm* carries on any business for that lender.

18.12.36 **G** When deciding whether to pay out from the *contingency fund*, a *firm* should take into account fairness to lenders and whether the lender made an active choice about whether or not to participate in the *contingency fund*.

#### Contingency funds: information when the fund is used

18.12.37 **R** (1) A *firm* must notify a lender if they receive payment from a *contingency fund*.

(2) This notification must state the amount paid to the lender from the *contingency fund*.

(3) This notification must be provided either:

(a) at the time the payment is made; or

(b) on an aggregated basis at least once every three *months*.

#### Contingency funds: information about how the fund is performing

18.12.38 **R** A *firm* which offers a *contingency fund* must make public on a quarterly basis the following facts about how the fund is performing:

the size of the fund compared to total amounts outstanding on *P2P agreements* relevant to the *contingency fund*;

what proportion of outstanding borrowing under *P2P agreements* has been paid using the *contingency fund*; and

a *firm* must:

(a) only include the actual amount of money held in the *contingency fund* at the relevant time, net of any liabilities or pay outs agreed but not yet paid; and

(b) not include any amounts due to be paid into the *contingency fund* that have not yet been paid into it.

**Past performance**

18.12.39 **R** A firm must ensure that information that contains an indication of past performance only contains information that is reflective of the actual payments received by lenders from borrowers under *P2P agreements*.

18.12.40 **G** One of the consequences of **COBS 18.12.39R** is that payments made to lenders from a *contingency fund* should not be reflected in any information that contains an indication of past performance. Firms should also take into account the effect of commissions, fees and other charges.



## Research and inducements for collective portfolio managers

1	Application	
1.1	G	<p>This section applies to:</p> <ul style="list-style-type: none"> <li>(1) a <i>small authorised UK AIFM</i> and a <i>residual CIS operator</i>, in accordance with COBS 18.5.2R;</li> <li>(2) a <i>full-scope UK AIFM</i>, in accordance with COBS 18.5A.3R;</li> <li>(3) a <i>UCITS management company</i>, in accordance with COBS 18.5B.2R.</li> </ul>
1.2	G	<p>In accordance with COBS 18.5.3CR and COBS 18.5A.7R, this section does not apply in relation to an <i>AIF</i> or <i>CIS</i> which in accordance with its core investment policy:</p> <ul style="list-style-type: none"> <li>(1) does not generally invest in <i>financial instruments</i> that can be: <ul style="list-style-type: none"> <li>(a) registered in a <i>financial instruments</i> account opened in the books of a <i>depository</i>; or</li> <li>(b) physically delivered to the <i>depository</i>; or</li> </ul> </li> <li>(2) generally invests in <i>issuers</i> or <i>non-listed companies</i> to potentially acquire <i>control</i> over such companies either individually or jointly with other <i>funds</i>.</li> </ul>
2	Rule on research and inducement	
2.1	R	<p>When <i>executing</i> orders, or placing orders with other entities for execution, that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i>, a <i>firm</i> must not:</p> <ul style="list-style-type: none"> <li>(1) accept and retain any fees, commissions or monetary benefits; or</li> <li>(2) accept any non-monetary benefits,</li> </ul> <p>where these are paid or provided by any third party or a <i>person</i> acting on behalf of a third party.</p>
2.2	R	<p>A <i>firm</i> must:</p> <ul style="list-style-type: none"> <li>(1) return to the <i>fund</i> as soon as reasonably possible after receipt any fees, commissions or any monetary benefits paid or provided by any third party or a <i>person</i> acting on behalf of a third party in relation to the services provided to that <i>fund</i>; and</li> <li>(2) inform the investors in the <i>fund</i> about the fees, commissions or any monetary benefits transferred to them (see paragraph 2.4G).</li> </ul>
2.3	R	<p>Paragraph 2.1R does not apply to:</p> <ul style="list-style-type: none"> <li>(1) minor non-monetary benefits that are: <ul style="list-style-type: none"> <li>(a) capable of enhancing the quality of service provided to the <i>fund</i> (see paragraph 3.1R); and</li> <li>(b) of a scale and nature such that they could not be judged to impair the <i>firm's</i> compliance with its duty to act honestly, fairly and professionally in the best interests of the <i>fund</i>; and</li> </ul> </li> </ul>

		(2)	<i>research</i> if the requirements of COBS 2.3B (Inducements and research) as modified by paragraph 4 are met.
2.4	G		A <i>firm</i> may inform investors in the <i>fund</i> about the fees, commissions or monetary benefits transferred to them through:
		(1)	the periodic reporting statements provided to <i>participants</i> in an <i>unregulated collective investment scheme</i> in accordance with COBS 18.5.11R for a <i>small authorised UK AIFM</i> or a <i>residual CIS operator</i> ; or
		(2)	the annual reports provided on request to investors, for a <i>small authorised UK AIFM</i> in relation to an <i>authorised AIF</i> , a <i>full-scope UK AIFM</i> , or a <i>UCITS management company</i> .
3			Acceptable minor non-monetary benefits
3.1	R		A <i>firm</i> must not accept a non-monetary benefit unless it is a minor non-monetary benefit which is reasonable, proportionate and of a scale that is unlikely to influence the <i>firm's</i> behaviour in any way that is detrimental to the interests of the <i>fund</i> , and which consists of:
		(1)	information or documentation relating to a <i>financial instrument</i> that is generic in nature; or
		(2)	written material from a third party that:
		(a)	is either:
		(i)	commissioned and paid for by a corporate <i>issuer</i> or potential <i>issuer</i> to promote a new issuance by the company; or
		(ii)	produced on an ongoing basis, where the third party is contractually engaged and paid by the <i>issuer</i> ;
		(b)	clearly discloses the relationship between the third party and the <i>issuer</i> ; and
		(c)	is made available at the same time to any <i>firm</i> wishing to receive it, or to the general public; or
		(3)	participation in conferences, seminars and other training events on the benefits and features of a specific <i>financial instrument</i> ; or
		(4)	hospitality of a reasonable de minimis value, such as food and drink during a business meeting or another training event mentioned under (3); or
		(5)	research relating to an issue of <i>shares</i> , <i>debentures</i> , <i>warrants</i> or <i>certificates representing certain securities</i> by an <i>issuer</i> , which is:
		(a)	produced by a <i>person</i> that is providing underwriting or placing services to the <i>issuer</i> on that issue;
		(b)	made available to prospective investors in the issue; and
		(c)	disseminated before the issue is completed; or



- (6) free sample *research* provided for a limited trial period where:
  - (a) the trial period lasts no longer than three months;
  - (b) the trial period is not commenced with a provider within 12 *months* from the termination of an arrangement for the provision of *research* (including a previous trial period) with that provider;
  - (c) the research provider offering the free trial has no existing relationship with the recipient *firm* for the provision of *research* or *execution* services; and
  - (d) the recipient *firm* keeps records of the dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in (a) to (c) above.
- (7) *research* on listed or unlisted companies with a market capitalisation below £200m, provided that it is offered on a rebundled basis or provided for free. The market capitalisation is to be calculated with reference to the average closing price of the shares of the company at the end of each *month* to 31 October for the preceding 24 *months*. For companies newly admitted to trading, determination of the threshold should be based on the market capitalisation at the close of day one trading and apply until the date of the next re-assessment (i.e., 31 October). For these purposes, *firms* may reasonably rely on the assessment of a third party that the *research* is on a company with a market capitalisation below £200m;
- (8) third party *research* that is received by a *firm* providing investment services or ancillary services to clients where it relates to fixed income, currency or commodity instruments;
- (9) *research* received from a research provider where the research provider is not engaged in *execution* services and is not part of a financial services group that includes an *investment firm* that offers *execution* or brokerage services;
- (10) written material that is made openly available from a third party to any *firm* wishing to receive it or to the general public. "Openly available" in this context means that there are no conditions or barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a *firm* or a member of the public in order to access that material; or
- (11) corporate access services which relate to listed or unlisted companies with a market capitalisation below £200m in accordance with paragraph 3.1 R(7).

3.2

G

An acceptable minor non-monetary benefit consisting of information or documentation relating to a *financial instrument* that is generic in nature may include material provided by a third party that:

- (1) consists of:
  - (a) short term market commentary on the latest economic statistics; or
  - (b) company results or information on upcoming releases or events;
- (2) contains only a brief unsubstantiated summary of the third party's own opinion on such information; and
- (3) does not include any substantive analysis (for example, where the third party simply reiterates a view based on an existing recommendation or substantive research).

3.3	G	A non-monetary benefit that involves a third party allocating valuable resources to the <i>firm</i> is not a minor non-monetary benefit.
3.4	G	In relation to paragraph 3.1R(8) above, since the particular features of the fixed income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account <i>re-search services</i> .
4		Inducements and research
4.1	R	A <i>firm</i> must comply with COBS 2.3B, as modified by this section, when <i>executing orders</i> , or placing orders with other entities for execution, that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i> .
		General modifications
4.2	R	The application provision in COBS 2.3B.1R (Application) and associated <i>guidance</i> in COBS 2.3B.2G do not apply.
4.3	R	Where COBS 2.3B applies to a <i>firm</i> , the following modifications apply: <ul style="list-style-type: none"> <li>(1) in COBS 2.3B.3R: <ul style="list-style-type: none"> <li>(a) the reference to “providing <i>investment services</i> or <i>ancillary services</i> to <i>clients</i>” is to be construed as a reference to “<i>executing orders</i>, or placing orders with other entities for execution, that relate to <i>financial instruments</i> for, or on behalf of, the <i>fund</i>”; and</li> <li>(b) the reference to “COBS 2.3A.5R, COBS 2.3A.15R or COBS 2.3A.16R” is to be construed as a reference to COBS 18 Annex 1 2.1R ;</li> </ul> </li> <li>(2) in COBS 2.3B.4R(1)(a), the reference to “third party research in respect of <i>investment services</i> rendered to its <i>clients</i>” is to be construed as a reference to “third party <i>research</i> in respect of <i>scheme management activity</i> or, for an AIFM, AIFM <i>investment management functions</i>”;</li> <li>(3) in COBS 2.3B.11R(3)(b)(ii), the reference to “the <i>firm’s</i> policy for using third party <i>research</i> established under COBS 2.3B.12R” is to be construed as a reference to “the <i>firm’s</i> written statement made in accordance with COBS 18 Annex 1 4.8R”;</li> <li>(4) in COBS 2.3B.22G: <ul style="list-style-type: none"> <li>(a) the reference to “COBS 2.3A.19R or COBS 2.3A” is to be construed as a reference to “COBS 18 Annex 1 3.1R or COBS 18 Annex 1 3.2G”; and</li> <li>(b) the reference to “COBS 2.3A.15R or COBS 2.3A” is to be construed as a reference to “COBS 18 Annex 1 2.1R”; and</li> </ul> </li> <li>(5) in COBS 2.3B.24G, the reference to COBS 11.2A is to be construed as a reference to: <ul style="list-style-type: none"> <li>(a) COBS 11.2 for <i>small authorised UK AIFMs</i>, <i>residual CIS operators</i>, and <i>full-scope UK AIFMs</i>; and</li> <li>(b) COBS 11.2B for <i>UCITS management companies</i>.</li> </ul> </li> </ul>
4.4	R	COBS 2.3B.8R(1) and the reference to “agreeing the <i>research charge</i> with its <i>clients</i> ” in COBS 2.3B.4R(2)(a) only apply if the <i>fund</i> has its own <i>governing body</i> which is independent of the <i>firm</i> .
4.5	G	(1) An example of a <i>fund</i> that has its own <i>governing body</i> which is independent of the <i>firm</i> is a <i>fund</i> that is a <i>body corporate</i> where the <i>firm</i> is not a <i>director</i> of the <i>fund</i> .

		(2)	An example of a <i>fund</i> that does not have its own <i>governing body</i> which is independent of the <i>firm</i> is a <i>fund</i> that is a <i>body corporate</i> where the <i>firm</i> is the sole <i>director</i> of the <i>fund</i> .
4.6	G		In accordance with COBS 18.5.3R(1), COBS 18.5A.5R and COBS 18.5B.4R(1), references to <i>client</i> are to be construed as references to any <i>fund</i> in respect of which the <i>firm</i> is acting or intends to act.
			Disapplication of disclosure provisions
4.7	R		The following provisions do not apply and references to them in COBS 2.3B are to be ignored:
		(1)	COBS 2.3B.5R;
		(2)	COBS 2.3B.6G;
		(3)	COBS 2.3B.8R(2);
		(4)	COBS 2.3B.9G;
		(5)	COBS 2.3B.12R; and
		(6)	COBS 2.3B.20R.
			Prior disclosure of the research account to investors
4.8	R		A <i>firm</i> using a <i>research</i> payment account must set out in writing:
		(1)	how the <i>firm</i> will comply with the elements of COBS 2.3B.4R(4);
		(2)	how <i>research</i> purchased through the <i>research</i> payment account may benefit the <i>fund</i> , taking into account its investment objective, policy and strategy;
		(3)	the approach the <i>firm</i> will take to allocate the costs of research fairly among the <i>funds</i> it manages;
		(4)	the manner in which, and the frequency at which, the <i>research</i> charge will be deducted from the assets of the <i>fund</i> ; and
		(5)	a statement as to where up-to-date information on the matters covered in COBS 18 Annex 1 4.11R can be obtained.
4.9	R		An <i>authorised fund manager</i> of an <i>authorised fund</i> must publish the information in paragraph 4.8 in the <i>fund's prospectus</i> .
4.10	G	(1)	A <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> may wish to publish the information in paragraph 4.8 with the information to be made available about <i>AIFs</i> in accordance with FUND 3.2.2R(9) (Prior disclosure of information to investors).
		(2)	A <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or a <i>residual CIS operator</i> may wish to publish the information in paragraph 4.8 with the information to be made available about <i>AIFs</i> in accordance with COBS 18.5.5R (Scheme documents for an <i>unauthorised fund</i> ).
4.11	R	(1)	A <i>firm</i> using a <i>research</i> payment account must publish:
		(a)	the budgeted amount for <i>research</i> ; and
		(b)	the amount of the estimated <i>research</i> charge for each <i>fund</i> .
		(2)	a <i>firm</i> must not increase its <i>research</i> budget or <i>research</i> charge unless it has provided clear information about the increase in good time before it is to take effect.
		(3)	The information in (1) and (2) must be made available to investors and potential investors in the <i>fund</i> .
			Periodic disclosure of the research payment account to investors
4.12	R		A <i>firm</i> using a <i>research</i> payment account must, for each <i>fund</i> it manages, provide information to investors on the total costs the <i>fund</i> has incurred for third-party <i>research</i> in the most recent annual accounting period.

4.13	R	An <i>authorised fund manager</i> of an <i>authorised fund</i> must publish the information in paragraph 4.12 in the annual long report of the <i>authorised fund</i> .
4.13	G	A <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> may wish to publish the information in paragraph 4.12 with the information to be made available about <i>AIFs</i> in accordance with FUND 3.3 (Annual report of an AIF).
4.14	R	<p>A <i>firm</i> using a <i>research</i> payment account must, on request, make available a summary of the following information to investors for the most recent annual accounting period:</p> <ol style="list-style-type: none"><li>(1) the providers paid from the account;</li><li>(2) the total amount each provider was paid;</li><li>(3) the benefits and services received by the <i>firm</i>; and</li><li>(4) how the total amount spent from the account compares to the budget set by the <i>firm</i>, noting any rebate or carry-over if residual monies are held in the account.</li></ol>

## Record keeping: client orders and transactions

1	Application	
1.1	R	<p>This section applies to:</p> <ul style="list-style-type: none"> <li>(1) a <i>firm</i> in respect of non-MiFID business related to commodity derivative instruments;</li> <li>(2) a <i>small authorised UK AIFM</i> and a <i>residual CIS operator</i>;</li> <li>(3) an <i>OPS firm</i> when it carries on business which is not <i>MiFID</i> or <i>equivalent third country business</i>; and</li> <li>(4) an <i>authorised professional firm</i> with respect to activities other than <i>non-mainstream regulated activities</i>.</li> </ul>
1.2	G	In accordance with COBS 18.5.3R(1), references to <i>client</i> in relation to a <i>small authorised UK AIFM</i> or a <i>residual CIS operator</i> are to be construed as references to any <i>fund</i> in respect of which the <i>firm</i> is acting or intends to act.
2	Record keeping of client orders and decisions to deal	
2.1	R	<ul style="list-style-type: none"> <li>(1) A <i>firm</i> must immediately make a record of the details in (2), to the extent they are applicable to the order or decision to deal in question, in relation to: <ul style="list-style-type: none"> <li>(a) every order received from a <i>client</i>;</li> <li>(b) every decision to deal taken in providing the service of <i>portfolio management</i>; and</li> <li>(c) for a <i>small authorised UK AIFM</i> and <i>residual CIS operator</i>, every decision to deal taken in managing <i>financial instruments</i> held for or within a <i>fund</i>.</li> </ul> </li> <li>(2) The details referred to in (1) are: <ul style="list-style-type: none"> <li>(a) the name or other designation of the <i>client</i>;</li> <li>(b) the name or other designation of any relevant <i>person</i> acting on behalf of the <i>client</i>;</li> <li>(c) the details specified in points (3), (4), and in points (5) to (8), of the table in 4.1;</li> <li>(d) the nature of the order if other than buy or sell;</li> <li>(e) the type of the order;</li> <li>(f) any other details, conditions and particular instructions from the <i>client</i> that specify how the order must be carried out; and</li> <li>(g) the date and exact time of the receipt of the order, or of the decision to deal by the <i>firm</i>.</li> </ul> </li> </ul>
3	Record-keeping of transactions	
3.1	R	<p>Immediately after executing a <i>client</i> order, or, in the case of <i>firms</i> that transmit orders to another <i>person</i> for execution, immediately after receiving confirmation that an order has been executed, <i>firms</i> must record the following details of the transaction in question:</p> <ul style="list-style-type: none"> <li>(1) the name or other designation of the <i>client</i>;</li> <li>(2) the details specified in points (1) to (10) of the table in 4.1R;</li> </ul>

		(3)		the total price, being the product of the unit price and the quantity;
		(4)		the nature of the transaction if other than buy or sell; and
		(5)		the natural person who <i>executed</i> the transaction or who is responsible for the <i>execution</i> .
3.2	R			If a <i>firm</i> transmits an order to another <i>person</i> for <i>execution</i> , the <i>firm</i> must immediately record the following details after making the transmission:
		(1)		the name or other designation of the <i>client</i> whose order has been transmitted;
		(2)		the name or other designation of the <i>person</i> to whom the order was transmitted;
		(3)		the terms of the order transmitted; and
		(4)		the date and exact time of transmission.
4			Details to be recorded	
4.1	R	(1)	Trading day	The trading day on which the transaction was executed.
		(2)	Trading time	The time at which the transaction was executed, reported in the local time of the <i>competent authority</i> to which the transaction will be reported, and the basis in which the transaction is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
		(3)	Buy/sell indicator	Identifies whether the transaction was a buy or sell from the perspective of the reporting <i>firm</i> or, in the case of a report to a <i>client</i> , of the <i>client</i> .
		(4)	Instrument identification	This must consist of: a unique code to be decided by the <i>competent authority</i> (if any) to which the report is made identifying the <i>financial instrument</i> which is the subject of the transaction; and if the <i>financial instrument</i> in question does not have a unique identification code, the name of the instrument or, in the case of a <i>derivative</i> contract, the characteristics of the contract.
		(5)	Unit price	The price per <i>security</i> or <i>derivative</i> contract excluding <i>commission</i> and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
		(6)	Price notation	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt the price is expressed as a percentage, that percentage must be included.
		(7)	Quantity	The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of <i>derivative</i> contracts included in the transaction.
		(8)	Quantity notation	An indication as to whether the quantity is the number of units of <i>financial instruments</i> , the nominal value of bonds or the number of <i>derivative</i> contracts.
		(9)	Counterparty	Identification of the counterparty to the transaction. (a) Where the counterparty is an <i>investment firm</i> , that identification must consist of a unique code for that

		<p><i>firm</i>, to be determined by the <i>competent authority</i> (if any) to which the report is made; where the counterparty is a <i>regulated market</i>, an <i>MTF</i> or an entity acting as its central counterparty, the unique harmonised identification code for that market, <i>MTF</i> or entity acting as central counterparty, as specified in the list published by the <i>competent authority</i> of the home Member State of that entity.</p> <p>(b) Where the counterparty is not an <i>investment firm</i>, a <i>regulated market</i>, an <i>MTF</i> or an entity acting as central counterparty, it should be identified as 'customer/client' of the <i>investment firm</i> which executed the transaction.</p>
(10)	Venue identification	<p>Identification of the venue where the transaction was executed.</p> <p>That identification must consist of: where the venue is a <i>trading venue</i>, its unique harmonised identification code; otherwise, the code 'OTC'.</p>

