

## Chapter 18

# Specialist Regimes



**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.