

Chapter 22

Restrictions on the distribution of certain complex investment products

22.6 Prohibition on the retail marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes

Application

22.6.1

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This section applies to:

- (1) *MiFID investment firms, with the exception of collective portfolio management investment firms;*
- (2) *branches of third country investment firms*
- (3) *MiFID optional exemption firms; and*
- (4) *TP firms which are EEA MiFID investment firms with the exception of collective portfolio management investment firms,*

in relation to the marketing, distribution or sale of *cryptoasset derivatives and cryptoasset exchange traded notes* in or from the *United Kingdom* to a *retail client*.

22.6.2

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In addition to the *persons* listed above, *persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

- (1) *Part 7 of the EU Exit Passport Regulations; or*
- (2) *Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)*

are required to comply with the *rules* in this section as a consequence of:

- (3) *regulation 59 of the EU Exit Passport Regulations; or*
- (4) *regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.*

22.6.3

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Firms and *TP firms* are reminded that the *Glossary* definition of *MiFID investment firm* includes *CRD credit institutions* when those institutions are providing an *investment service or activity*.

22.6.4 **G** For the avoidance of doubt, in ■ COBS 22.6.1R, “marketing” includes *communicating* and/or *approving financial promotions*, and “distribution or sale” includes *dealing* in relation to *cryptoasset derivatives* and *cryptoasset exchange traded notes*.

Prohibitions

22.6.5 **R**

- (1) A *firm* or *TP firm* must not:
 - (a) sell a *cryptoasset derivative* or a *cryptoasset exchange traded note* to a *retail client*; or
 - (b) distribute a *cryptoasset derivative* or a *cryptoasset exchange traded note* to a *retail client*; or
 - (c) market a *cryptoasset derivative* or a *cryptoasset exchange traded note* if the marketing is addressed to or disseminated in such a way that it is likely to be received by a *retail client*.
- (2) “Marketing” includes, but is not limited to, *communicating* and/or *approving financial promotions*.