

Chapter 4

Communicating with clients, including financial promotions

4.1 Application

Who? What?

4.1.1

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This chapter applies to a *firm*:

- (1) communicating with a *client* in relation to its *designated investment business* (other than *MiFID, equivalent third country or optional exemption business*);
- (1A) communicating with a *client* in relation to its *MiFID, equivalent third country or optional exemption business*;
- (2) *communicating or approving a financial promotion* other than:
 - (a) a *financial promotion of qualifying credit, a home purchase plan or a home reversion plan*; or
 - (b) a *financial promotion* in respect of a *non-investment insurance contract*; or
 - (c) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the Act if made by an *authorised person* (*firms* may not *communicate or approve* such promotions); or
 - (d) a *financial promotion* in relation to a *credit agreement, a consumer hire agreement or a credit-related regulated activity*; or
 - (e) a *financial promotion* in relation to a *funeral plan contract or a regulated funeral plan activity*.
- (3) when a *MiFID investment firm* or a *credit institution* is communicating in connection with selling, or advising *clients* in relation to, *structured deposits* as specified by ■ COBS 1.1.1AAR.

4.1.1A

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■ COBS 4.4.3R applies to a *firm* with respect to the activity of *issuing electronic money*.

4.1.1B

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- (1) *TP firms* must comply with the *rules* in (3) and (4) to the extent that those *rules* do not already apply to those *TP firms* as a result of ■ GEN 2.2.26R.
- (2) *Gibraltar-based firms* must comply with the *rules* in (3) and (4) to the extent that those *rules* do not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R.
- (3) The *rules* are those in:

- (a) ■ COBS 4.5.2R (communicating with retail clients – general rule);
 - (b) ■ COBS 4.10 (approving and confirming compliance of financial promotions); and
 - (c) ■ COBS 4.11 (Record keeping: financial promotion).
- (4) The *rules* are those in this chapter in so far as they relate to the *communication and approval of financial promotions* relating to *qualifying cryptoassets*.
- 4.1.1C** G ■ COBS 4.12A.3R and ■ COBS 4.12B.1R apply the *rules* on promoting *restricted mass market investments* and *non-mass market investments* to *TP firms* and *Gibraltar-based firms*.
- 4.1.1D** G A *firm* is reminded of its obligations under the *naming and marketing rules* in ■ ESG 4.3 (in particular, ■ ESG 4.3.1R) when it:
- (1) *communicates or approves a financial promotion* that references the *sustainability characteristics* of a product or service; or
 - (2) undertakes *sustainability in-scope business* in relation to a *sustainability product*.
- 4.1.2** G
- (1) This chapter applies in relation to an *authorised professional firm* in accordance with ■ COBS 18 (Specialist regimes).
 - (2) This chapter applies, to a limited extent, in relation to *communicating or approving a financial promotion* that relates to a *deposit* if the *deposit* is a *structured deposit, cash deposit ISA* or *cash deposit CTF*.
- 4.1.3** G A *firm* is required to comply with the *financial promotion rules* in relation to a *financial promotion communicated* by its *appointed representative* even where the *financial promotion* does not require *approval* because of the exemption in article 16 of the *Financial Promotion Order* (Exempt persons).
 [Note: see section 39 of the Act]
- 4.1.4** G
- (1) In ■ COBS 4.3.1 R, the defined term "*financial promotion*" includes:
 - (a) in relation to *MiFID, equivalent third country or optional exemption business*, all communications that are marketing communications within the meaning of *MiFID*; and
 - (b) in relation to *insurance distribution*, all communications that are marketing communications within the meaning of *IDD*.
 - (2) In the case of *MiFID, equivalent third country or optional exemption business*, certain requirements in this chapter are subject to an exemption for the communication of a *third party prospectus* in certain circumstances (see recital 73 of the *MiFID Org Regulation*). This has a similar effect to the exemption in article 70(1)(c) of the *Financial Promotion Order*, which is referred to in the definition of an *excluded communication*.

(3) In this chapter “*financial promotion*” and “*direct offer financial promotion*” include communications that are marketing communications for the purposes of the *UCITS Directive*.

4.1.5 **G** A firm communicating with an *eligible counterparty* should have regard to the application of *COBS* to *eligible counterparty business* (■ *COBS 1 Annex 1 Part 1*).

4.1.6 **G** Approving a *financial promotion* without communicating it (which includes causing it to be communicated) is not *MiFID, equivalent third country or optional exemption business*. Communicating a *financial promotion* to a person, such as a *corporate finance contact* or a *venture capital contact*, who is not a *client* within the meaning of ■ *COBS 3.2.1 R (1)*, ■ *COBS 3.2.1 R (2)* or ■ *COBS 3.2.1 R (4)* in respect of the *MiFID, equivalent third country or optional exemption business* to which the *financial promotion* relates, is also not *MiFID, equivalent third country or optional exemption business*. Further guidance on what amounts to *MiFID business* may be found in ■ *PERG 13*.

4.1.7 **G** A reference in this chapter to *MiFID, equivalent third country or optional exemption business* includes a reference to communications that occur before an agreement to perform services in relation to *MiFID, equivalent third country or optional exemption business*.

[Note: see recital 16 to the *MiFID Org Regulation*]

What? Modification relating to the KII Regulation

4.1.7A **R** The rules in this chapter do not apply in relation to the form or content of a *key investor information document*, an *EEA key investor information document* or a *NURS-KII document*.

4.1.7B **G**

- (1) The *KII Regulation* specifies in an exhaustive manner the form and content of the *key investor information document* for a *UCITS scheme*.
- (2) The form and content of a *NURS-KII document* is specified by ■ *COLL 4.7.3AR* (Form and content of a *NURS-KII document*) and in ■ *COLL Appendix 2R* (Modifications to the *KII Regulation* for *KII-compliant NURS*).

[Note: see article 3(1) of the *KII Regulation*]

Who? What? Application to registered persons promoting qualifying cryptoassets

4.1.7C **R**

- (1) This chapter applies to a *registered person communicating a financial promotion* relating to one or more *qualifying cryptoassets* (in reliance on the exemption in article 73ZA of the *Financial Promotion Order*) as it applies to an *authorised person communicating a financial promotion* relating to one or more *qualifying cryptoassets*.
- (2) For the purpose of (1), relevant references in this chapter to a *firm* include reference to a *registered person*.

4.1.7D

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(3) Where a *rule* in the *Handbook* applies to a *registered person communicating a financial promotion* relating to one or more *qualifying cryptoassets*, relevant references to a *client* include reference to a *person* to whom a *financial promotion* is, or is likely to be, *communicated* by the relevant *registered person*.

(4) A *registered person* must establish, implement and maintain adequate policies and procedures sufficient to ensure its compliance with its obligations under the *rules* when *communicating financial promotions* relating to *qualifying cryptoassets*.

(1) ■ COBS 4.1.7CR(1) requires a *registered person* to comply with the relevant *rules* in this chapter on the form and content of *financial promotions* (including those in ■ COBS 4.12A). It also requires a *registered person* to make records of the *financial promotions* it *communicates* in compliance with the relevant *rules* in ■ COBS 4.11 (Record keeping: financial promotion).

(2) There are other requirements outside this chapter which apply to *registered persons communicating financial promotions* relating to *qualifying cryptoassets*, including:

- (a) *Principle 7* (Communications with clients);
- (b) ■ GEN 1.2 (Referring to approval by the FCA); and
- (c) ■ GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator).

4.1.7E

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The exemption in article 73ZA of the *Financial Promotion Order* does not give rise to a type of *excluded communication*.

Where? General position

4.1.8

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(1) In relation to communications by a *firm* to a *client* in relation to its *designated investment business* this chapter applies in accordance with the *general application rule* and the *rule* on business with *UK clients* from an overseas establishment (■ COBS 1 Annex 1 Part 2 paragraph 2.1R).

(2) In addition, the *financial promotion rules* apply to a *firm* in relation to:

- (a) the *communication* of a *financial promotion* to a *person* inside the *United Kingdom*;
- (b) the *communication* of a *cold call* to a *person* outside the *United Kingdom*, unless:
 - (i) it is made from a place outside the *United Kingdom*; and
 - (ii) it is made for the purposes of a business which is carried on outside the *United Kingdom* and which is not carried on in the *United Kingdom*; and
- (c) the *approval* of a *financial promotion* for *communication* to a *person* inside the *United Kingdom*.

4.1.9 **G** [deleted]

4.1.10 **G** *Firms* should note the territorial scope of this chapter is also affected by:

- (1) the disapplication for *financial promotions* originating outside the *United Kingdom* that are not capable of having an effect within the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotion)) (see the defined term "*excluded communication*");
- (2) the exemptions for overseas communicators (see the defined term "*excluded communication*"); and
- (3) the *rules* on *financial promotions* with an overseas element (see ■ COBS 4.9).