

Chapter 4

Communicating with clients, including financial promotions

4.12A Promotion of restricted mass market investments

Purpose

4.12A.1

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The *rules* in this section:

- (1) require that any *financial promotion* relating to a *restricted mass market investment* includes a prescribed form of risk warning;
- (2) restrict the *communication* and *approval* of *direct offer financial promotions* in relation to *restricted mass market investments* except where certain conditions are satisfied; and
- (3) require that a *financial promotion* which relates to a *restricted mass market investment* does not offer to any *retail client* any form of incentive. The purpose of this *rule* (■ COBS 4.12A.7R) is to ensure that *retail clients* are not persuaded or incited to *engage in investment activity* relating to a *restricted mass market investment* other than by reference to the features of the investment activity that is the subject of the *financial promotion*.

Application

4.12A.2

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This section applies to a *firm* when *communicating a financial promotion*, or *approving a financial promotion for communication*, to a *retail client* in relation to a *restricted mass market investment*.

4.12A.3

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In this section, reference to a *firm* includes:

- (1) *TP firms*, to the extent that this section does not already apply to those *TP firms* as a result of ■ GEN 2.2.26R; and
- (2) *Gibraltar-based firms*, to the extent that this section does not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R.

4.12A.4

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This section does not apply to:

- (1) *excluded communications*;
- (2) *image advertising*; or
- (3) *financial promotions* to the extent that they relate to *local authority securities*.

4.12A.5 **G** ■ COBS 4.12A.15R does not apply in relation to *credit union subordinated debt* or to deferred shares issued by a *credit union*. *Firms* are reminded that ■ CREDS 3A contains requirements regarding the retail distribution and *financial promotion* of these instruments.

4.12A.6 **G** The requirements in this section relating to the provision of risk warnings are in addition, and without prejudice, to *firms'* other obligations in relation to the provision of information.

Restrictions on monetary and non-monetary incentives

4.12A.7 **R**

- (1) A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *restricted mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive.
- (2) The *rule* in (1) does not apply where the conditions in paragraph (3) or (4) are satisfied.
- (3) The conditions are that:
 - (a) the relevant incentive is a product or service produced or provided by the *person*, or a member of the *group* of the *person*, who will benefit from the proceeds of the investment; and
 - (b) the *financial promotion* relates to a *non-readily realisable security*, *P2P agreement*, *P2P portfolio* or a unit in a *long-term asset fund*.
- (4) The conditions are that the incentive is:
 - (a) offered for the exclusive purpose of encouraging a *retail client* to transfer their existing holding of one or more *restricted mass market investments* from an existing arrangement with one *person* to a different arrangement with another *person*; and
 - (b) not structured in such a way as to encourage further investment in any *restricted mass market investment*.

4.12A.8 **G** For the purposes of ■ COBS 4.12A.7R, monetary and non-monetary incentives include, but are not limited to:

- (1) offering bonuses when investing in a *restricted mass market investment*;
- (2) offering bonuses where the *client* refers another *person*;
- (3) offering cashback when investing in a *restricted mass market investment*;
- (4) offering discounts or rebates on fees paid that are linked to volumes of trades made in *restricted mass market investments*;
- (5) offering free gifts once an investment in a *restricted mass market investment* has been made such as laptops or mobile telephones; or
- (6) offering any additional free *investments* or offering discounts on *investments*.

- 4.12A.9** G
- (1) Information and research tools do not constitute non-monetary incentives.
 - (2) Lower fees or charges not linked to volumes of trades, made available to all *retail clients*, do not constitute a monetary incentive.
 - (3) The effect of ■ **COBS 4.12A.7R(4)** is that a *financial promotion* may offer an incentive to transfer an existing holding of a *restricted mass market investment* (for example, from one platform to another). However, the incentive must relate solely to the transfer and must not be used to encourage *retail clients* to otherwise *engage in investment activity* in relation to *restricted mass market investments*.

- 4.12A.9A** G
- Subject to ■ **COBS 4.12A.8G** and ■ **COBS 4.12A.9G**, the following factors are otherwise relevant in determining whether a benefit is an incentive:
- (1) A benefit which is intrinsically connected with the *investment* or investment activity that is the subject of the *financial promotion* is unlikely to constitute an incentive – for example, voting rights which are carried by a share. However, a benefit which is entirely separable from the *investment* or investment activity that is the subject of the *financial promotion* is likely to be an incentive.
 - (2) A benefit which is only available for a fixed period of time, or is contingent upon investing in a *restricted mass market investment* in the future, is likely to constitute an incentive. This would not include, for example, a benefit which is offered in connection with a specified event, such as the first close of an investment.
 - (3) A benefit which is only available to *retail clients* who invest through a particular medium is likely to constitute an incentive – for example, a benefit which is only offered to *retail clients* who invest via a social media link.

- 4.12A.9B** G
- (1) ■ **COBS 4.12A.7R** applies irrespective of the nature of the investment activity. This means that the *rule* applies not only in relation to incentives to *buy restricted mass market investments* but also, for example, to incentives to enter into agreements for the purposes of transacting in *restricted mass market investments*.
 - (2) The rationale for offering the incentive is immaterial. This means that the *rule* applies to incentives which are intended, for example, to encourage *retail clients* to make investments ahead of the end of the tax year.

Risk warning

- 4.12A.10** R A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *restricted mass market investment* unless it contains a risk warning that complies with ■ **COBS 4.12A.11R**.

- 4.12A.11** R
- (1) For the purposes of ■ **COBS 4.12A.10R**, the *financial promotion* must contain:

- (a) the following risk warning if the *financial promotion* relates to one or more *non-readily realisable securities*:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong.

- (b) the following risk warning if the *financial promotion* relates to one or more *P2P agreements* or *P2P portfolios*:

Don't invest unless you're prepared to lose money. This is a high-risk investment. You may not be able to access your money easily and are unlikely to be protected if something goes wrong.

- (c) the following risk warning if the *financial promotion* relates to a *unit* in a *long-term asset fund*:

This is a high-risk investment, and assets may take a long time to buy and sell. Only invest if you can wait (possibly several years) to get your money back. You do not have protection against poor performance.

the following risk warning if the *financial promotion* relates to one or more *qualifying cryptoassets*:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you should not expect to be protected if something goes wrong.

- (2) Where the number of characters contained in the risk warning in (1) exceeds the number of characters permitted by a third-party marketing provider:

- (a) the following risk warning must be used if the *financial promotion* relates to one or more *non-readily realisable securities* or *qualifying cryptoassets*:

Don't invest unless you're prepared to lose all the money you invest.

- (b) the following risk warning must be used if the *financial promotion* relates to one or more *P2P agreements* or *P2P portfolios*:

Don't invest unless you're prepared to lose money.

- (c) the following risk warning must be used if the *financial promotion* relates to a *unit* in a *long-term asset fund*:

This is a high-risk investment, so only invest if you can wait to get your money back.

- (3) Where the *financial promotion* is, or is to be, *communicated* by way of a website, mobile application or other digital medium:

- (a) the risk warning in (1) or (2) must also include a link:
 - (i) in the form of the text: Take 2 mins to learn more; and
 - (ii) which, when activated, delivers an appropriate risk summary in a pop-up box (or equivalent) relating to the type of *investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R;

- (b) the link required by (3)(a) need not be:

- (i) in the form required by (3)(a)(i) if the inclusion of that additional text would exceed the number of characters permitted by a third-party marketing provider;
 - (ii) provided if the medium of communication does not allow the incorporation of a link.
- (4) Where the *financial promotion* is *communicated* other than by way of a website, mobile application or other digital medium (and including where the *financial promotion* is a *real time financial promotion*), the risk warning in (1) must be:
- (a) provided:
 - (i) in a *durable medium*; or
 - (ii) if the medium of communication means that the risk warning cannot be provided in a *durable medium*, in a manner appropriate to the medium of communication; and
 - (b) however the *financial promotion* is *communicated*, accompanied by an appropriate risk summary:
 - (i) in a *durable medium*; and
 - (ii) relating to the type of *investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R, unless it is not possible to obtain the information necessary to enable the risk summary to be provided in a *durable medium*.
- (5) (a) A *firm* must omit the words “and you are unlikely to be protected if something goes wrong” from the risk warnings required by (1)(a), (1)(b) or (1)(d) if the conditions in (5)(b) apply.
- (b) The conditions are that:
- (i) the *financial promotion* relates to an *investment*:
 - (A) that is issued by; or
 - (B) the provision of which involves a, *participant firm* or an *appointed representative* of a *participant firm*; and
 - (ii) the activity of the *person* in (i) is of a type that could give rise to a *protected claim*.
- (c) A *firm* that omits the words in (a) must make a record of the basis on which the conditions in (b) are met.
- (6) The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with ■ COBS 4.12A.36R and ■ COBS 4.12A.38R.
- (7) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12A.40R and ■ COBS 4.12A.42R.
- (8) Where the *financial promotion* relates to a *unit* in a *long-term asset fund*, the appropriate risk summary required by (3)(a)(ii) or (4)(b) (see ■ COBS 4 Annex 1R(7) (Risk summary for units in a long-term asset fund)) must be adapted to reflect the characteristics of the relevant *LTAf*, particularly the *dealing* arrangements for the *LTAf* and the applicable *notice period*.

4.12A.12 G

- (1) Reference in ■ COBS 4.12A.11R(5)(b)(i)(B) to the ‘provision’ of an *investment* is to a *person* developing, managing or packaging an *investment* such as an *operator*. It does not refer to *persons* involved in distributing, or intermediating the sale of, an *investment* such as a financial adviser, a *person arranging investments* or an *operator of an electronic system in relation to lending*.
- (2) A *firm* relying on ■ COBS 4.12A.11R(5) should consider obtaining external legal advice (from legal advisers with relevant expertise and experience) on the appropriateness of omitting the words in that *rule* from a risk warning. Any such advice should be recorded as part of the *firm’s* compliance with ■ COBS 4.12A.11R(5)(c).

4.12A.13 G

- (1) Even where it is not possible to provide a risk warning in a *durable medium* (for example, because the *financial promotion* is a *real time financial promotion*), the recipient of the *financial promotion* must still ordinarily be provided with an appropriate risk summary in a *durable medium* at or around the time that the *financial promotion* is *communicated* (■ COBS 4.12A.11R(4)(b)).
- (2) It is unlikely to be possible to comply with ■ COBS 4.12A.11R(4)(b) where the *financial promotion* is *communicated* by means of (without limitation) a television or radio broadcast. In such a case, the *financial promotion* must still include the relevant risk warning specified in ■ COBS 4.12A.11R(1).

Direct offer financial promotions

4.12A.14 G

- (1) ■ COBS 4.12A.15R to ■ COBS 4.12A.35G apply in relation to *direct offer financial promotions to retail clients* in relation to *restricted mass market investments*.
- (2) A *firm* may *communicate* information about a *P2P agreement* or a *P2P portfolio* to a *retail client* before ■ COBS 4.12A.15R applies, provided that the defining elements of a *direct offer financial promotion* are not present in that communication. This information may comprise, without limitation, mandatory disclosures applicable to that *firm*, such as those set out in ■ COBS 18.12.24R to ■ COBS 18.12.28R, including information about:
 - (a) the identity of the borrower(s);
 - (b) the *price* or *target rate*, provided they are accompanied by a fair description of the anticipated actual return, taking into account fees, default rates and taxation;
 - (c) the term;
 - (d) the risk categorisation; and
 - (e) a description of any security interest, insurance, guarantee or other risk mitigation measures adopted by the *firm*.
- (3) ■ COBS 4.12A.18R (First condition: cooling off period) does not apply where a *direct offer financial promotion* to a *retail client* relates only to a *unit* in a *long-term asset fund*.

4.12A.15 R

- (1) Unless permitted by ■ COBS 4.12A.17R and subject to (2), (3) and (4), a *firm* must not:
 - (a) *communicate a direct offer financial promotion* relating to a *restricted mass market investment* to a *retail client* unless the conditions in ■ COBS 4.12A.18R (cooling off period), ■ COBS 4.12A.20R (personalised risk warning), ■ COBS 4.12A.21R (categorisation) and ■ COBS 4.12A.28R (appropriateness) are satisfied; or
 - (b) *approve a direct offer financial promotion* relating to a *restricted mass market investment* for *communication* to a *retail client* unless the *firm* is satisfied that the conditions in ■ COBS 4.12A.18R (cooling off period), ■ COBS 4.12A.20R (personalised risk warning), ■ COBS 4.12A.21R (categorisation) and ■ COBS 4.12A.28R (appropriateness) will be satisfied in relation to each *communication* of the *direct offer financial promotion*.
- (2) The conditions in ■ COBS 4.12A.18R (cooling off period) and ■ COBS 4.12A.20R (personalised risk warning) do not need to be satisfied if the *retail client* has previously received a *direct offer financial promotion* relating to a *restricted mass market investment* from the same *person* as would otherwise need to satisfy them.
- (3) The condition in ■ COBS 4.12A.28R (appropriateness) does not need to be satisfied if the specific type of *restricted mass market investment* to which the *direct offer financial promotion* relates has previously been assessed as appropriate for the *retail client* by the same *person* as would otherwise need to undertake the assessment.
- (4) Where the *direct offer financial promotion* relates only to a *unit* in a *long-term asset fund*:
 - (a) the condition in ■ COBS 4.12A.18R (cooling off period) does not apply; and
 - (b) the condition in ■ COBS 4.12A.20R (personalised risk warning) does not need to be satisfied if the *retail client* has previously received a *direct offer financial promotion* relating to a *unit* in a *long-term asset fund* from the same *person* that would otherwise need to satisfy the condition.

4.12A.16 G

The effect of ■ COBS 4.12A.15R and related provisions in this section is that:

- (1) a personalised risk warning and cooling off period are only required on the first occasion that a *firm*, or other *person communicating an approved direct offer financial promotion*, communicates a *direct offer financial promotion* relating to a *restricted mass market investment* (other than a *unit* in a *long-term asset fund*) to a particular *retail client*;
- (1A) where a *direct offer financial promotion* relates only to a *unit* in a *long-term asset fund*:
 - (a) a personalised risk warning is required only on the first occasion that a *firm*, or other *person communicating an approved direct offer financial promotion*, communicates a *direct offer financial promotion* to a particular *retail client*; and
 - (b) a cooling off period is not required;

- (2) an appropriateness assessment is only required on the first occasion that a particular *retail client* responds to a *direct offer financial promotion* relating to a specific type of *restricted mass market investment* (although a *firm* should consider whether it would be in the best interests of the *retail client* for a further assessment to be undertaken, for example due to lapse of time, even where this is not required); and
- (3) in any case, a *direct offer financial promotion* relating to a *restricted mass market investment* can only be *communicated* to a *retail client* who has a current statement (completed and signed within the period of 12 months ending with on the day on which the *communication* is to be made) of a type falling within **■ COBS 4.12A.22R** and which applies to the type of *restricted mass market investment* to which the *direct offer financial promotion* relates.

4.12A.17 **R** A *firm* may *communicate* or *approve* a *direct offer financial promotion* relating to a *restricted mass market investment* to, or for *communication* to, a *retail client* if:

- (1) the *firm* itself will comply with the *suitability rules* (**■ COBS 9** and **■ 9A**) in relation to the *investment* promoted; or
- (2) the *retail client* has confirmed before the promotion is made that they are a *retail client* of another *firm* that will comply with the *suitability rules* (**■ COBS 9** and **■ 9A**) in relation to the *investment* promoted; or
- (3) the *retail client* is a *corporate finance contact* or a *venture capital contact*.

First condition: cooling off period

4.12A.18 **R** (1) The first condition is that following the *retail client's* request to receive the *direct offer financial promotion*, the *firm*, or other person *communicating* the *direct offer financial promotion*:

- (a) allows a period of at least 24 hours (the 'cooling off period') to elapse before *communicating* the *direct offer financial promotion*;
- (b) following the lapse of time in (a), invites the *retail client* to specify whether they wish to:
 - (i) leave the *investment journey*; or
 - (ii) continue to receive the *direct offer financial promotion*; and
- (c) the *retail client* specifies that they wish to continue to receive the *direct offer financial promotion*.

(2) The options in (1)(b) must be presented with equal prominence.

(3) This condition does not apply if the *direct offer financial promotion* relates only to *units* in a *long-term asset fund*.

4.12A.19 **G**

■ COBS 4.12A.18R does not prevent the *person* who is subject to it from engaging with the *retail client* during the cooling off period. This includes for the purposes of providing the *client* with the personalised risk warning required by ■ COBS 4.12A.20R and obtaining the information necessary to undertake the appropriateness assessment required by ■ COBS 4.12A.28R.

Second condition: personalised risk warning

4.12A.20 **R**

(1) Subject to (1A) below, the second condition is that before *communicating the direct offer financial promotion*, the *firm*, or other *person communicating the direct offer financial promotion*:

- (a) obtains the *retail client's* full name; and
- (b) having obtained the *retail client's* name, communicates to that *retail client* the following personalised risk warning:

[Client name], this is a high-risk investment. How would you feel if you lost the money you're about to invest? Take 2 mins to learn more.

(1A) Where the *direct offer financial promotion* relates to a *unit* in a *long-term asset fund*, the second condition is that before *communicating the direct offer financial promotion*, the *firm*, or other *person communicating the direct offer financial promotion*:

- (a) obtains the *retail client's* full name; and
- (b) having obtained the *retail client's* name, communicates to that *retail client* the following personalised risk warning:

[Client name], this is a high-risk investment, and assets may take a long time to buy and sell. Only invest if you can wait (possibly several years) to get your money back. You do not have protection against poor performance. Take 2 mins to learn more.

[Editor's note: The last sentence in this text will be underlined in the final rules.]

(2) If the *direct offer financial promotion* is, or is to be, *communicated* by means of a website, mobile application or other digital medium, the personalised risk warning in (1)(b) or (1A)(b) must:

- (a) be clearly brought to the *retail client's* attention by means of a pop-up box (or equivalent);
- (b) include a link which, when activated, delivers an appropriate risk summary in a further pop-up box (or equivalent):
 - (i) relating to the type of *restricted mass market investment* that is the subject of the *direct offer financial promotion*; and
 - (ii) selected from ■ COBS 4 Annex 1R; and
- (c) be accompanied by an invitation to the *retail client* to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *direct offer financial promotion*.

- (3) If the *direct offer financial promotion* is, or is to be, *communicated* other than by means of a website, mobile application or other digital medium:
 - (a) the personalised risk warning in (1)(b) or (1A)(b) must be:
 - (i) provided to the *retail client* omitting the words “Take 2 mins to learn more”; and
 - (ii) accompanied by an appropriate risk summary in a *durable medium* relating to the type of *restricted mass market investment* that is the subject of the *direct offer financial promotion* selected from ■ COBS 4 Annex 1R; and
 - (b) the *retail client* must then be invited to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *direct offer financial promotion*.
- (4) The options in (2)(c) and (3)(b) must be presented with equal prominence.
- (5) This condition:
 - (a) is only satisfied if the *retail client* specifies that they wish to continue to receive the *direct offer financial promotion*; and
 - (b) must be satisfied before steps are taken to satisfy the conditions in ■ COBS 4.12A.21R (categorisation) and ■ COBS 4.12A.28R (appropriateness).
- (6) The personalised risk warning required by (1)(b) or (1A)(b) and the risk summary required by (2)(b) must comply with ■ COBS 4.12A.40R and ■ COBS 4.12A.42R.
- (7) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12A.36R and ■ COBS 4.12A.38R.
- (8) Where the *financial promotion* relates to a *unit* in a *long-term asset fund*, the appropriate risk summary required by (2)(b) or (3)(a)(ii) (see ■ COBS 4 Annex 1R(7) (Risk summary for units in a long-term asset fund)) must be adapted to reflect the characteristics of the relevant *LTAf*, particularly the *dealing* arrangements for the *LTAf* and the applicable *notice period*.

Third condition: categorisation

4.12A.21 R

The third condition is that before *communicating* the *direct offer financial promotion*, the *firm*, or other person *communicating* the *direct offer financial promotion*, takes reasonable steps to establish that the *retail client* is:

- (1) certified as:
 - (a) a ‘high net worth investor’;
 - (b) a ‘sophisticated investor’; or
 - (c) a ‘restricted investor’, or

- (2) if the *direct offer financial promotion* relates to a *non-readily realisable security*, a *P2P agreement*, a *P2P portfolio* or a *unit in a long-term asset fund*, self-certified as a 'sophisticated investor',

in each case in accordance with ■ COBS 4.12A.22R.

4.12A.22 R

- (1) A certified high net worth investor, a certified sophisticated investor, a self-certified sophisticated investor or a restricted investor is an individual:
- (a) who has completed and signed, within the period of 12 *months* ending on the day on which the *communication* is made, a statement in the terms set out in the applicable rule listed below and as modified by (2):
- (i) certified high net worth investor: ■ COBS 4 Annex 2R;
 - (ii) certified sophisticated investor: ■ COBS 4 Annex 3R;
 - (iii) self-certified sophisticated investor: ■ COBS 4 Annex 4R;
 - (iv) restricted investor: ■ COBS 4 Annex 5R; and
- (b) whose completion of the statement in (a) indicates that they meet the relevant criteria to be categorised as such.
- (2) When used in relation to *P2P agreements* or a *P2P portfolio*, the statement in ■ COBS 4 Annex 4R (self-certified sophisticated investor) must be modified as follows:
- (a) the reference to "an unlisted company" must be replaced with a reference to "a P2P agreement or P2P portfolio"; and
- (b) the reference to "private equity, or in the provision of finance for small and medium enterprises" must be replaced with a reference to "the provision of finance, resulting in an understanding of the P2P agreements or P2P portfolios to which the promotions will relate".

4.12A.23 E

For the purposes of ■ COBS 4.12A.21R, a *firm* (or relevant other *person*) will have taken reasonable steps to establish the certification of a *retail client* where:

- (1) the *firm* (or other *person*) has obtained the relevant completed certificate from the *retail client*; and
- (2) the *retail client's* completion of the certificate evidences that the *retail client* meets the criteria to be certified as such.

4.12A.24 G

Where the *direct offer financial promotion* will relate to more than one type of *restricted mass market investment*, the condition in ■ COBS 4.12A.21R may be satisfied by the *retail client* signing a combined statement that meets the requirements in ■ COBS 4 Annex 2R to ■ COBS 4 Annex 5R, as applicable, in respect of each type of *restricted mass market investment* to which the *direct offer financial promotion* will relate.

4.12A.25 G

- (1) Where the restricted investor statement (■ COBS 4 Annex 5R) refers to a restricted investor not investing more than 10% of their net assets,

this refers to the *retail client's* aggregate investment across all types of *restricted mass market investment*.

- (2) However, a *retail client* may be informed that they need not include in the calculation referred to in (1) any investment in a *restricted mass market investment* made in response to a *direct offer financial promotion* for the purpose of which they were categorised as sophisticated (whether on a certified or self-certified basis).

4.12A.26 R A firm must not:

- (1) influence, or seek to influence, the information that a *retail client* provides when completing a certificate in ■ COBS 4.12A.22R; or
- (2) encourage a *retail client* to complete a further certificate in the event that a *client's* signed certificate indicates that they do not meet the criteria to be categorised as a high net worth, sophisticated or restricted investor, as applicable.

Fourth condition: appropriateness

4.12A.27 G

- (1) The fourth condition is relevant if the recipient of the *direct offer financial promotion* makes an application or order for a *restricted mass market investment* in response to that *direct offer financial promotion*.
- (2) The fourth condition requires a *restricted mass market investment* to be assessed as appropriate for a *retail client* before an application or order is processed. The *rules* and *guidance* are not prescriptive as to how such an assessment is undertaken. The condition is designed to ensure that *retail clients* are only able to invest in *restricted mass market investments* which they have the knowledge and experience to understand, particularly in relation to the risks. Appropriateness processes should be designed to this end.

4.12A.28 R

- (1) The fourth condition applies where the *firm* itself or the *person* who will:
 - (a) *arrange* or *deal* in relation to a *non-readily realisable security*;
 - (b) facilitate the *retail client* becoming a lender under a *P2P agreement* or a *P2P portfolio*; or
 - (c) *arrange* or *deal* in relation to a *unit* in a *long-term asset fund*, or *issue* such a *unit*; or
 - (d) transact in a *qualifying cryptoasset*,
 is aware, or ought reasonably to be aware, that an application or order is in response to the *direct offer financial promotion*.
- (2) The condition is that the *firm* or *person* in (1) will only process the application or order once it has assessed that the *restricted mass market investment* is appropriate for the *retail client* in compliance with the *rules* in ■ COBS 10 or ■ COBS 10A (as applicable) or equivalent requirements as modified and supplemented by ■ COBS 4.12A.30R to ■ COBS 4.12A.32R.

- 4.12A.29** G
- (1) If the *person* in ■ COBS 4.12A.28R(1) is not a *firm*, the effect of ■ COBS 4.12A.28R(2) is that the *person* is required to undertake that assessment as if the *rules* in ■ COBS 10 or ■ COBS 10A applied to them.
 - (2) The *firm* or *person* in ■ COBS 4.12A.28R(1) can gather information for the purpose of assessing, and undertake its assessment of, whether a *restricted mass market investment* is appropriate for a *retail client* before the end of any 'cooling off period' required by ■ COBS 4.12A.18R.
- 4.12A.30** R
- In the course of providing information regarding their knowledge and experience for the purpose of the appropriateness assessment required by ■ COBS 4.12A.28R, the *retail client* must not be provided with assistance, information, guidance or feedback which might affect the substance of the information that they provide.
- 4.12A.31** R
- (1) This *rule* applies if:
 - (a) a *restricted mass market investment* is assessed as not being appropriate for a particular *retail client*; and
 - (b) the assessment of appropriateness is based on a series of questions which the *retail client* is required to answer.
 - (2) The *retail client* must not be informed of the particular answers which led to the *restricted mass market investment* being assessed as not appropriate for them.
 - (3) Any further assessment of the appropriateness of that *restricted mass market investment* for that *retail client* must not be based on the same questions as were used for the purpose of a previous assessment of the appropriateness of that *restricted mass market investment* for that *retail client*.
- 4.12A.32** R
- (1) This *rule* applies where a first and second assessment have both determined that a *restricted mass market investment* is not appropriate for a particular *retail client*.
 - (2) Following the second, and each and every subsequent, determination that a *restricted mass market investment* is not appropriate for a *retail client*, any further assessment of the appropriateness of that *restricted mass market investment* for that *retail client* must not be undertaken for at least 24 hours.
- 4.12A.33** G
- The effect of ■ COBS 4.12A.28R to ■ COBS 4.12A.32R is that:
- (1) *direct offer financial promotions* relating to *restricted mass market investments* may only be *communicated*, or *approved for communication*, to *retail clients* if any application or order received in response to that *direct offer financial promotion* will be fulfilled only where that *restricted mass market investment* has been assessed as being appropriate for that *retail client*;
 - (2) if the assessment of appropriateness results in the provision of a warning (a determination that the *restricted mass market investment*

is not appropriate for the *retail client* (■ COBS 10.3 or ■ COBS 10A.3)), then an order or application received in response to a *direct offer financial promotion* may not be fulfilled; and

- (3) the circumstances in which an assessment of appropriateness need not be undertaken (■ COBS 10.4 and ■ COBS 10A.4) are not relevant for the purpose of the fourth condition.

4.12A.34 G

When gathering information regarding a *retail client's* knowledge and experience for the purpose of assessing whether a *restricted mass market investment* is appropriate for that *retail client*, the *firm* or *person* undertaking the assessment should:

- (1) avoid asking the *retail client* questions that invite binary (yes/no) answers;
- (2) if asking multiple-choice questions, use questions which offer at least 3 plausible answers (excluding the option to answer 'do not know', or similar); and
- (3) ensure that questions address matters that are relevant to the specific type of *investment* in which the *retail client* has expressed interest (see also ■ COBS 10.2.2R).

4.12A.35 G

- (1) A *retail client* should only be informed of the outcome of an appropriateness assessment once they have provided all of the information required for the assessment to be undertaken.
- (2) ■ COBS 4.12A.31R(2) does not prevent a *retail client* from being informed of the broad reasons for which a *restricted mass market investment* was assessed not to be appropriate for them or of the nature of the deficiencies identified in their knowledge or experience. The *rule* is intended to prevent a *retail client* from being informed only of the questions within an assessment which led to a *restricted mass market investment* being assessed not to be appropriate such that the *client* is able simply to change their answer in any subsequent assessment without improving their own understanding.
- (3) For the purposes of ■ COBS 4.12A.31R(3), any questions used to undertake a further assessment of appropriateness should be sufficiently different such that the *retail client* could not simply infer the answers that would lead to an assessment of appropriateness from the outcome of their responses to a previous set of questions.
- (4) A *firm* should consider whether the particular features of a *restricted mass market investment* mean that an interval of greater than 24 hours should be applied following a second assessment (and any subsequent assessment) that that *investment* is not appropriate for a *retail client* (■ COBS 4.12A.32R(2)).
- (5) A *retail client* may be informed of the option to re-apply to *buy* a *restricted mass market investment* following a determination that the *restricted mass market investment* is not appropriate for them. However, the *retail client* should not be encouraged to do so.

Requirements of risk warnings and non-digital risk summaries

4.12A.36 **R**

- (1) The relevant risk warning in **COBS 4.12A.11R(1)** or **(2)** and the relevant risk summaries in **COBS 4.12A.11R(4)(b)** and **COBS 4.12A.20R(3)(a)(ii)** must:
 - (a) be prominent, taking into account the content, size and orientation of the *financial promotion* as a whole;
 - (b) except where the risk warning cannot be provided in writing, be clearly legible, contained within its own border and with bold and underlined text as indicated in **COBS 4.12A.11R** or **COBS 4 Annex 1R**.
- (2) The relevant risk warning in **COBS 4.12A.11R(1)** or **(2)** must, if the *financial promotion* is, or is to be, *communicated* by means of:
 - (a) a website or mobile application:
 - (i) be statically fixed and visible at the top of the screen, below anything else that also stays static, even when the *retail client* scrolls up or down the webpage; and
 - (ii) be included as described in (i) on each linked webpage on the website or page on the application relating to the relevant *investment*;
 - (b) a television broadcast, be prominently fixed on the screen for the duration of the broadcast.

4.12A.37 **G**

- (1) The *FCA* expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing digital financial promotions and, in particular, how the risk warning will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>
- (2) *Firms* should have regard to the intended or likely recipients of a *financial promotion*. Where a *firm* considers that such *persons* are unlikely to have a good understanding of the English language, a risk warning or risk summary required by the *rules* in this section should be provided in an appropriate language in addition to English.

4.12A.38 **R**

The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the risk warning or risk summary.
[Note: The *FCA* has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12A.39 **G**

For the purposes of **COBS 4.12A.38R**, design features which might reduce the visibility or prominence of a risk warning or risk summary include, but are not limited to:

- (1) using a font size for the risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *client* to read the text;

- (3) fading the text of the risk warning or risk summary;
- (4) placing the risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional links to be clicked in order for the full text of the risk warning to be seen;
- (6) using a font or background in the risk warning or risk summary in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning or risk summary in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk warning or risk summary from other forms of information.

Requirements of digital personalised risk warnings and digital risk summaries

4.12A.40 R The relevant personalised risk warning in ■ COBS 4.12A.20R(2) and the relevant risk summaries in ■ COBS 4.12A.11R(3)(a)(ii) and ■ COBS 4.12A.20R(2)(b) must be:

- (1) prominently brought to the *retail client's* attention, taking into account the content, size and orientation of the *financial promotion* as a whole;
- (2) clearly legible, contained within its own border and with bold and underlined text as indicated in ■ COBS 4.12A.20R(1)(b), ■ COBS 4.12A.20R(1A)(b) and ■ COBS 4 Annex 1R;
- (3) statically fixed and visible in the middle of the screen; and
- (4) the main focus of the screen.

4.12A.41 G

- (1) The *FCA* expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing digital financial promotions and, in particular, how the personalised risk warning or risk summary will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>
- (2) *Firms* should have regard to the intended or likely recipients of a *financial promotion*. Where a *firm* considers that such *persons* are unlikely to have a good understanding of the English language, a risk warning or risk summary required by the *rules* in this section should be provided in an appropriate language in addition to English.

4.12A.42 R The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the personalised risk warning or risk summary.
 [Note: The *FCA* has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12A.43 **G** For the purposes of **■ COBS 4.12A.42R**, design features which might reduce the visibility or prominence of a personalised risk warning or risk summary include, but are not limited to:

- (1) using a font size for the personalised risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *retail client* to read the text;
- (3) fading the text of the personalised risk warning or risk summary;
- (4) placing the personalised risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional actions to be taken by the *retail client*, such as requiring additional links to be clicked in order for the full text of the personalised risk warning or risk summary to be seen;
- (6) using a font or background in the risk warning in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the personalised risk warning or risk summary from other forms of information.

Risk summaries

4.12A.44 **R** Where a *rule* in this section requires a *firm* to communicate a risk summary selected from **■ COBS 4 Annex 1R**, the *firm* must either:

- (1) (subject to **■ COBS 4.12A.46R**) provide the risk summary as it appears in **■ COBS 4 Annex 1R**; or
- (2) provide a version of the risk summary in **■ COBS 4 Annex 1R** in appropriately amended form, provided that:
 - (a) the *firm* has a valid reason for each amendment;
 - (b) the *firm* makes a record of each amendment and the reason for it;
 - (c) any alternative or additional text is in plain English; and
 - (d) the amended risk summary does not take longer than around 2 minutes to read.

4.12A.45 **G** For the purposes of **■ COBS 4.12A.44R(2)**, the following reasons are considered to be valid:

- (1) the relevant part of the risk summary in **■ COBS 4 Annex 1R** would be misleading in relation to the particular *investment*;
- (2) the relevant part of the risk summary in **■ COBS 4 Annex 1R** would be irrelevant in relation to the particular *investment*;

- (3) the risk summary in ■ COBS 4 Annex 1R does not include a risk that is relevant to the particular *investment* and it is appropriate for that further risk to be included;
- (4) the sole purpose of the relevant statement in the risk summary is to include a hyperlink to a webpage and the medium of communication does not permit the incorporation of a link;
- (5) the *firm* is required to adapt the risk summary in accordance with ■ COBS 4.12A.11R(8) (Risk warning) or ■ COBS 4.12A.20R(8) (Second condition: personalised risk warning).

This list is not exhaustive.

4.12A.46 **R** ■ COBS 4.12A.44R(1) does not apply to a *firm* which communicates a risk summary relating to *units* in an *LTAf* (see ■ COBS 4.12A.11R(8) (Risk warning) and ■ COBS 4.12A.20R(8) (Second condition: personalised risk warning)).

4.12A.47 **G** A *firm* communicating a risk summary relating to *units* in an *LTAf* (see ■ COBS 4 Annex 1R(7) (Risk summaries)) is required to adapt the risk summary to reflect the characteristics of the relevant *LTAf*, particularly the *dealing* arrangements for the *LTAf* and the applicable *notice period* (see ■ COBS 4.12A.11R(8) (Risk warning) and ■ COBS 4.12A.20R(8) (Second condition: personalised risk warning)). Other amendments may also be appropriate. When amending the risk summary, the *firm* will need to comply with ■ COBS 4.12A.44R(2).