

Chapter 4

Communicating with clients, including financial promotions

4.7 Direct offer financial promotions

Application

4.7.-2

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This section (other than ■ COBS 4.7.-1AEU to ■ COBS 4.7.-1DG) does not apply in relation to a communication:

- (1) to the extent that it is an *excluded communication*;
- (2) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
- (3) if it is *image advertising*;
- (4) to the extent that it relates to a *deposit* that is not a *cash deposit ISA*, *cash-only lifetime ISA* or *cash deposit CTF*;
- (5) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

4.7.-1

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- (1) ■ COBS 4.7.-1AUK to ■ COBS 4.7.1R contain provisions on the communication of *direct offer financial promotions*.
- (2) In broad terms:
 - (a) ■ COBS 4.7.-1AUK is relevant to a *firm* communicating a *direct offer financial promotion* in relation to its *MiFID*, *equivalent third country* or *optional exemption business*;
 - (b) ■ COBS 4.7.1R is relevant to a *firm* communicating a *direct offer financial promotion* that does not relate to its *MiFID*, *equivalent third country* or *optional exemption business*; and
 - (c) the application of the other operative provisions in this section is not affected by reference to *MiFID*, *equivalent third country* or *optional exemption business*.
- (3) However, a *MiFID investment firm*, *third country investment firm* or *MiFID optional exemption firm* which is subject to the requirements in ■ COBS 4.7.-1AUK may be subject to the rule in ■ COBS 4.7.1R to the extent that it communicates a *direct offer financial promotion*:
 - (a) which is not a marketing communication; or
 - (b) which does not relate to its *MiFID*, *equivalent third country* or *optional exemption business*.

Direct offer financial promotions relating to MiFID, equivalent third country or optional exemption business

4.7.-1A **UK** 46(6) Marketing communications containing an offer or invitation of the following nature and specifying the manner of response or including a form by which any response may be made, shall include such of the information referred to in Articles 47 to 50 as is relevant to that offer or invitation:

(a) an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service with any person who responds to the communication;

(b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service.

However, the first subparagraph shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential client must refer to another document or documents, which, alone or in combination, contain that information.

[Note: article 46(6) of the *MiFID Org Regulation*]

Effect of provisions marked “UK” for third country investment firms and MiFID optional exemptions firms

4.7.-1B **R** Provisions in this section marked “UK” apply in relation to *MiFID optional exemption business* as if they were *rules* (see **COBS 1.2.2G**).

4.7.-1C **G** The effect of **GEN 2.2.22AR** is that provisions in this section marked “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

4.7.-1D **G** For the purposes of **COBS 4.7.-1AUK**, the provisions of articles 47 to 50 of the *MiFID Org Regulation* can be found reproduced in **COBS 6.1ZA** and **COBS 14.3A**.

Other direct offer financial promotions

4.7.1 **R** (1) Subject to (3) and (4), a *firm* must ensure that a *direct offer financial promotion* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client* contains:

(a) the information referred to in the *rules* on information disclosure (**COBS 6.1.4 R**, **COBS 6.1.6 R**, **COBS 6.1.7 R**, **COBS 6.1.9 R**, **COBS 14.3.2 R**, **COBS 14.3.3 R**, **COBS 14.3.4 R** and **COBS 14.3.5 R**) as is relevant to that offer or invitation; and

(b) additional appropriate information about the *relevant business* and *relevant investments* so that the *client* is reasonably able to understand the nature and risks of the *relevant business* and *relevant investments* and consequently to take investment decisions on an informed basis.

(2) This *rule* does not require the information in (1) to be included in a *direct offer financial promotion* if, in order to respond to an offer or invitation contained in it, the *retail client* must refer to another

document or documents, which, alone or in combination, contain that information.

(3) This *rule* does not apply in relation to a marketing communication that relates to a *firm's MiFID, equivalent third country or optional exemption business*

(4) [deleted]

(5) [deleted]

Guidance

4.7.2 G Although ■ COBS 4.7.1R (1)(b) does not apply in relation to *MiFID, equivalent third country or optional exemption business*, similar requirements may apply under ■ COBS 2.2A.

4.7.2A G (1) ■ BCBS 2A contains *rules and guidance* about the inclusion of a summary box in a *direct offer financial promotion* relating to a *cash deposit ISA or cash deposit CTF* provided by a *firm* other than a *credit union*.

(2) Where ■ BCBS 2A applies, ■ COBS 4.7.1R(1)(b) does not require a *firm* to include information outside a summary box in a *direct offer financial promotion* to the extent that this would simply repeat information included in a summary box in the same *financial promotion*.

4.7.3 G (1) ■ COBS 4.7.1R (2) allows a *firm* to *communicate a direct offer financial promotion* that does not contain all the information required by ■ COBS 4.7.1R (1), if the *firm* can demonstrate that the *client* has referred to the required information before the *client* makes or accepts an offer in response to the *direct offer financial promotion*.

(2) A *firm communicating or approving a direct offer financial promotion* may also be subject to:

- (a) the *rules* on providing product information in ■ COBS 14.2, including the exceptions in ■ COBS 14.2.5R to ■ 14.2.9R; and
- (b) the requirement in the *PRIPs Regulation* to provide a *key information document*.

4.7.4 G In order to enable a *client* to make an informed assessment of a *relevant investment or relevant business*, a *firm* may wish to include in a *direct offer financial promotion*:

- (1) a summary of the taxation of any *investment* to which it relates and the taxation consequences for the average member of the group to whom it is directed or by whom it is likely to be received;
- (2) a statement that the recipient should seek a *personal recommendation* if he has any doubt about the suitability of the *investments* or services being promoted; and

(3) (in relation to a promotion for a *non-PRIP packaged product* that is not a *financial instrument*) a *key features illustration*, in which a *generic projection* may generally be used.

4.7.5 **G** [deleted]

4.7.5A **G** ■ COBS 4.13.2 R (Marketing communications relating to UCITS schemes) and ■ COBS 4.13.3 R (Marketing communications relating to feeder UCITS) contain additional disclosure requirements for *firms* in relation to marketing communications (other than *key investor information*) that concern particular investment strategies of a *UCITS scheme*

Warrants and derivatives

4.7.6 **R** (1) A *firm* must not *communicate* or *approve* a *direct offer financial promotion*:

- (a) relating to a *warrant* or *derivative*;
- (b) to or for *communication* to a *retail client*; and
- (c) where the *firm* will not itself be required to comply with the *rules* on appropriateness (see ■ COBS 10 and ■ 10A);

unless the *firm* has adequate evidence that the condition in (2) is satisfied.

(2) The condition is that the *person* who will *arrange* or *deal* in relation to the *derivative* or *warrant* will comply with the *rules* on appropriateness or equivalent requirements for any application or order that the *person* is aware, or ought reasonably to be aware, is in response to the *direct offer financial promotion*.

4.7.6A **G** *Firms* are reminded of their obligations in relation to the marketing, distribution and sale of *restricted speculative investments* in ■ COBS 22.5.

4.7.6B **G** *Firms* are reminded of the prohibitions in relation to the marketing, distribution and sale of *cryptoasset derivatives* and *cryptoasset exchange traded notes* in ■ COBS 22.6.

4.7.6C **R** [deleted]

4.7.6D **R** [deleted]

4.7.6E **R** [deleted]

4.7.6F **G** [deleted]

4.7.6G **G** [deleted]

4.7.6H	R	[deleted]
4.7.6I	G	[deleted]
4.7.6J	R	[deleted]
4.7.6K	G	[deleted]
4.7.6L	R	[deleted]
4.7.6M	G	[deleted]
4.7.6N	R	[deleted]
4.7.6O	G	[deleted]
4.7.7	R	[deleted]
4.7.8	R	[deleted]
4.7.9	R	[deleted]
4.7.10	R	[deleted]
4.7.11	G	[deleted]
4.7.11A	G	
4.7.11A	G	[deleted]
4.7.12	G	[deleted]
4.7.13	G	[deleted]
4.7.14	R	[deleted]
4.7.15	G	[deleted]