

Conduct of Business Sourcebook

Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in *COBS* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D			
			For private person?	Removed?	For other person?	
All <i>rules</i> in <i>COBS</i> with the status letter "E"			No	No	No	
Any <i>rule</i> in <i>COBS</i> which prohibits an <i>authorised person</i> from seeking to make provision excluding or restricting any duty or liability			Yes	No	Yes	Any other person
Any <i>rule</i> in <i>COBS</i> which is directed at ensuring that transactions in <i>designated investments</i> are not effected with the benefit of unpublished information that, if made public, would be likely to affect the price of that designated investment			Yes	No	Yes	Any other person
The <i>fair, clear and not misleading rule</i>			Yes	In part (Note 1)	No	

All other <i>rules</i> in COBS	Yes	No	No
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Notes

1. COBS 4.2.6R provides that if, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the Act.