

OCCUPATIONAL PENSION SCHEME FIRM (CONDUCT OF BUSINESS AND ORGANISATIONAL REQUIREMENTS) INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers); and
 - (c) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. Annex A and the amendment in Annex B to SYSC 10A.1.4R come into force on 3 January 2018.
- D. Annex C and the amendment in Annex B to SYSC 10A.1.1R come into force on 2 April 2018.

Amendments to the Handbook

- E. The modules of the FCA’s Handbook of rules and guidance listed in column (1) are amended in accordance with the Annexes to this instrument listed in column (2) below:

| (1) | (2) |
|--|---------|
| Glossary of definitions | Annex A |
| Senior Management Arrangements, Systems and Controls sourcebook (SYSC) | Annex B |
| Conduct of Business sourcebook (COBS) | Annex C |

Citation

- F. This instrument may be cited as the Occupational Pension Scheme Firm (Conduct of Business and Organisational Requirements) Instrument 2017.

By order of the Board
19 October 2017

Annex A

Amendments to the Glossary of definitions

This Annex comes into force on 3 January 2018.

In this Annex, underlining indicates new text.

- OPS firm* (a) (except in *IPRU(INV)*) a *firm* which:
- (i) carries on *OPS activity*; and
 - (ii) is one or more of the following:
 - ...
 - (C) a *company* which is:
 - ...
 - (III) an administering authority subject to the Local Government Pension Scheme (Administration) Regulations 2008 or the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014; or
- ...

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

This Annex comes into force on 2 April 2018 in respect of the amendment to SYSC 10A.1.1R, and on 3 January 2018 in respect of the amendment to SYSC 10A.1.4R.

In this Annex, underlining indicates new text and striking through indicates deleted text.

10A Recording telephone conversations and electronic communications

10A.1 Application

10A.1.1 R Subject to the exemptions in SYSC 10A.1.4R, this chapter applies to a *firm*:

(1) that is a:

...

(j) that carries on *energy market activity* or *oil market activity*;
~~and~~ or

(k) is an OPS firm; and

...

...

10A.1.4 R This chapter does not apply to the carrying on of:

...

(3A) the activities referred to in SYSC 10A.1.1R(2)(d) to (g), to the extent that they are carried out by a MiFID investment firm or third country investment firm in financial instruments that are not:

(a) admitted to trading on a trading venue; or

(b) traded on a trading venue; or

(c) instruments for which a request has been made for admission to trading on a trading venue; or

(d) instruments covered by paragraph (a), (b) or (c), but the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in those paragraphs; or

(4) ...

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

This Annex comes into force on 2 April 2018.

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Conduct of business obligations

...

2.3C Research and execution services

Application

2.3C.1 R This section applies to an *investment firm* providing execution services to:

...

(7) an *incoming EEA AIFM branch*; or

(8) an OPS firm.

...

18 Specialist regimes

...

COBS 18.8 (OPS firms - non scope business) is deleted in its entirety. The deleted text is not shown.

18.8 OPS firms - non scope business [deleted]

After the deleted COBS 18.8 (OPS firms – non scope business) insert the following new section COBS 18.8A. The text is not underlined.

18.8A OPS firms

Application

18.8A.1 R This section applies to an *OPS firm* when it carries on *OPS activity*:

- (1) from an establishment maintained by it in the *United Kingdom*; and
- (2) which is not *MiFID*, *equivalent third country* or *optional exemption business*.

Interpretation and general modifications

- 18.8A.2 R Where a *COBS rule* specified in this section applies to an *OPS firm*, the following modifications apply:
- (1) a reference to:
 - (a) “*client*” is to be construed as a reference to the *occupational pension scheme* or *welfare trust*, as the case may be, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of whom the relevant business is to be carried on; and
 - (b) “*investment firm*” is to be construed as a reference to an *OPS firm*;
 - (2) if an *OPS firm* is required by a *COBS rule* specified in this section to provide information to, or obtain consent from, a *client*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *occupational pension scheme* or *welfare trust* for whom that *firm* is acting; and
 - (3) subject to the modifications in *COBS 18.8A.6R*, *COBS 18.8A.15R(4)* and *COBS 18.8A.16R(4)*, *COBS 1.2.3R* (References in *COBS* to the *MiFID Org Regulation*) applies where a *COBS* provision marked “EU” applies to an *OPS firm*.

General rule

- 18.8A.3 R Except as specified in this section, the provisions of *COBS* do not apply to an *OPS firm* in relation to its *OPS activity*.

Client categorisation

- 18.8A.4 R *COBS 3* (Client categorisation) applies to an *OPS firm* but only for the purpose of determining the *client* categorisation of an *occupational pension scheme* or *welfare trust*.

Inducements in relation to OPS activity that is advising on investments in relation to a financial instrument or providing portfolio management services

- 18.8A.5 R The *COBS* provisions in Table 1 apply:
- (1) to an *OPS firm* when it carries on *OPS activity* which is:
 - (a) *advising on investments* in relation to a *financial instrument*; or

- (b) providing *portfolio management* services; and
- (2) as modified by *COBS* 18.8A.6R.

| Table 1 | |
|---------------------|--|
| COBS | Description |
| 2.1.1R | The client's best interests rule. |
| 2.3A.16R except (1) | Inducements relating to the provision of independent advice and portfolio management services to retail clients outside the United Kingdom or to professional clients. |
| 2.3A.18G | Guidance relating to fees, commission, and non-monetary benefits paid or provided by a person on behalf of a client. |
| 2.3A.19R | Acceptable minor non-monetary benefits. |
| 2.3A.20G | Guidance about determining whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service provided to the client. |
| 2.3A.21G | Guidance about when a non-monetary benefit might impair compliance with the duty to act in the client's best interest. |
| 2.3A.22G | Guidance relating to acceptable minor non-monetary benefits. |
| 2.3A.30G | Guidance on inducements. |
| 2.3A.31G | Guidance on inducements. |

Modification of inducement rules specified in Table 1

- 18.8A.6 R Where a provision of *COBS* specified in Table 1 applies, a reference to "*investment service*" is to be construed as a reference to the relevant *OPS activity* falling within the scope of *COBS* 18.8A.5R.

Inducements in relation to *OPS activity* not within the scope of *COBS* 18.8A.5R

- 18.8A.7 R The *COBS* provisions in Table 2 apply:
- (1) to an *OPS firm* when it carries on any *OPS activity* other than that to which *COBS* 18.8A.5R applies; and
 - (2) as modified by *COBS* 18.8A.8R.

| Table 2 | |
|---------------------------------------|----------------------------------|
| COBS | Description |
| 2.1.1R | The client's best interests rule |
| 2.3.1R, other than (2)(b)(i) to (iii) | Rule on inducements |
| 2.3.2R | Disclosure obligation |

Modification of inducement rules specified in Table 2

- 18.8A.8 R In *COBS* 2.3.1R, a reference to “*designated investment business*” is to be construed as a reference to any *OPS activity* that does not fall within the scope of *COBS* 18.8A.5R.

Inducements and research

- 18.8A.9 R The provisions in *COBS* 2.3B (Inducements and research) apply to an *OPS firm* with the following modifications:
- (1) *COBS* 2.3B.1R does not apply;
 - (2) for the *guidance* in *COBS* 2.3B.2G substitute the following *guidance*:

“(1) An *OPS firm* is prohibited from receiving inducements (other than acceptable minor non-monetary benefits) in relation to *OPS activity* falling within the scope of *COBS* 18.8A.5R. Compliance with *COBS* 2.3B (Inducements and research) allows such a *firm* to receive third party *research* (relating to *OPS activity* falling within the scope of *COBS* 18.8A.5R) without breaching the prohibition in *COBS* 2.3A.16R.

(2) An *OPS firm* may receive third party *research* in relation to *OPS activity* falling within the scope of *COBS* 18.8A.7R without subjecting that *research* to an assessment under the inducement *rule* in *COBS* 2.3.1R if the *research* is acquired in accordance with *COBS* 2.3B as such *research* will not constitute an inducement.”;
 - (3) the reference in *COBS* 2.3B.3R to “*COBS* 2.3A.5R” should be construed as a reference to *COBS* 2.3.1R (Rule on inducements);
 - (4) in relation to an *OPS firm* carrying out *OPS activity* falling within the scope of *COBS* 18.8A.5R, for the *guidance* in *COBS* 2.3B.22G substitute:

“An *OPS firm* should also consider whether the goods or services it is looking to receive are acceptable minor non-monetary benefits under *COBS* 2.3A.19R or *COBS* 2.3A.22G, which can be received without breaching the inducement *rule* in *COBS* 2.3A.16R(2).”;

- (5) *COBS 2.3B.22G* does not apply to an *OPS firm* that is carrying on *OPS activity* falling within the scope of *COBS 18.8A.7R*; and
- (6) a reference to “*ancillary services*” or “*investment services*” in *COBS 2.3B.3R*, *COBS 2.3B.4R* and *COBS 2.3B.5R* is to be construed as a reference to, as applicable, either:
 - (a) *OPS activity* that falls within the scope of *COBS 18.8A.5R*; or
 - (b) *OPS activity* that falls within the scope of *COBS 18.8A.7R*.

Suitability

18.8A.10 R The *COBS* provisions in Table 3 apply:

- (1) to an *OPS firm* when it carries on *OPS activity* which is:
 - (a) making a *personal recommendation* in relation to a *designated investment*; or
 - (b) *managing investments*; and
- (2) as modified by *COBS 18.8A.11R*.

| Table 3 | |
|----------------|--|
| COBS | Description |
| 2.1.1R | Client’s best interests rule |
| 9.2.1R | Assessing suitability: the obligations |
| 9.2.2R | Assessing suitability: the obligations |
| 9.2.3R | Assessing suitability: the obligations |
| 9.2.4R | Assessing suitability: the obligations |
| 9.2.5R | Reliance on information |
| 9.2.6R | Insufficient information |
| 9.2.7G | Insufficient information |
| 9.3.1G | Guidance on assessing suitability |
| 9.3.2G | Churning and switching |
| 9.5.1G | Record keeping and retention periods for suitability records |

Modification of suitability rules

- 18.8A.11 R In *COBS 9.2.7G* for that part which states,
 “...The *firm* should also bear in mind the *client’s best interests rule* and any other obligation it may have under the *rules* relating to appropriateness when providing the different service (see *COBS 10, Appropriateness* (for non-advised services)) and *COBS 10A, Appropriateness* (for non-advised services) (MiFID provisions)).”,
 substitute,
 “The *firm* should bear in mind any other obligation it may have under the *rules* relating to the different service being requested by the *client*.”.

Professional clients

- 18.8A.12 R (1) If an *OPS firm* makes a *personal recommendation* to a *per se professional client* the *firm* is entitled to assume that the *client* is able financially to bear any related investment risks consistent with the *client’s* investment objectives for the purposes of *COBS 9.2.2R(1)(b)*.
- (2) If an *OPS firm* makes a *personal recommendation* or *manages investments* for a *professional client* it is entitled to assume that, in relation to the products, transactions and services for which the *professional client* is so classified, the *client* has the necessary level of experience and knowledge for the purposes of *COBS 9.2.2R(1)(c)*.

Best execution

- 18.8A.13 R The provisions in *COBS 11.2A* (Best execution – MiFID provisions) apply:
- (1) to an *OPS firm* when it carries on *OPS activity* which is *executing* an order for a *client* in relation to a *financial instrument*; and
- (2) as modified by *COBS 18.8A.15R*.
- 18.8A.14 R The provisions in *COBS 11.2A* (Best execution – MiFID provisions) marked “EU” and *COBS 11 Annex 1EU* (Regulatory Technical Standard 28) apply to an *OPS firm* to which (1) applies as if they were *rules*.

Modification of best execution rules

- 18.8A.15 R (1) The reference to the inducement requirements in *COBS 11.2A.19R* is to be construed as a reference to, as applicable, the inducement requirements applying to an *OPS firm* pursuant to either:
- (a) *COBS 18.8A.5R*; or
- (b) *COBS 18.8A.7R*.
- (2) The requirement in *COBS 11.2A.34EU* (see article 65(6) of the *MiFID Org Regulation*) to make public for each class of *financial instruments*:

- (a) the top five *investment firms* used by an *OPS firm* to *execute client* orders; and
 - (b) information on the quality of execution obtained,
- applies in accordance with (3).
- (3) The information to be made public under (2) must:
 - (a) be published for the first time no later than 30 April 2019 and then annually no later than 30 April of each subsequent year; and
 - (b) relate to the calendar year immediately preceding the year in which the information is being made public.
 - (4) In *COBS* 11.2A, a reference to:
 - (a) “*investment service*” is to be construed as a reference to any *OPS activity* falling within the scope of *COBS* 18.8A.13R;
 - (b) “*portfolio management*” in *COBS* 11.2A.34EU (see article 65(1) of the *MiFID Org Regulation*) is to be construed as a reference to *OPS activity* falling within the scope of *COBS* 18.8A.13R and which involves the *OPS firm* placing orders with other entities for execution that result from decisions by the *OPS firm* to deal in *financial instruments* on behalf of its *client*; and
 - (c) “reception and transmission of orders” is to be construed as a reference to *OPS activity* falling within the scope of *COBS* 18.8A.13R and which involves the transmission of *client* orders to other entities for execution.

Client order handling

- 18.8A.16 R (1) The *COBS* provisions in *COBS* 11.3 (Client order handling) apply to an *OPS firm*, as modified by this *rule*.
- (2) The provisions in *COBS* 11.3 (Client order handling) marked “EU” apply to an *OPS firm* as if they were *rules*.
- (3) A *rule* in *COBS* 11.3 which applies only to a *UCITS management company* or a *management company* does not apply to an *OPS firm*.
- (4) A reference to “*financial instrument*” is to be construed as a reference to a *designated investment* (other than a *P2P agreement*).

Personal account dealing

- 18.8A.17 R The provisions in *COBS* 11.7 (Personal account dealing), other than *COBS*

11.7.2R(1), apply to an *OPS firm*.

Client reporting

- 18.8A.18 R (1) The provisions in *COBS 16.2* (Occasional reporting) and *COBS 16.3* (Periodic reporting) apply to an *OPS firm*, as modified by this *rule*.
- (2) In *COBS 16.2.6R* (Special cases) add the following paragraph after *COBS 16.2.6R(3)*:
- “(4) the *firm* is an *OPS firm* and carries on *OPS activity* for an *occupational pension scheme* trustee who is a *professional client* and who is habitually resident in the *United Kingdom*. In this case, the *OPS firm* may rely upon the exceptions in *COBS 16.2.1R(2)* or *COBS 16.2.6R(1)* only if it provides a *periodic statement* to the *professional client* containing the information required by *COBS 18.8A.18R(3)*.”.
- (3) Where an *OPS firm* carries on *OPS activity* and is obliged to provide a *periodic statement*, the *periodic statement* must contain the information in the table below.

| Information to be included in a periodic statement provided by an OPS firm conducting OPS activity | |
|--|--|
| (a) | Investment objectives |
| | A statement of any investment objectives governing the mandate of the portfolio of the <i>occupational pension scheme</i> as at the closing and starting date of the <i>periodic statement</i> . |
| (b) | Details of any asset loaned or charged |
| | (i) a summary of any <i>investments</i> that were, at the closing date, lent to a third party and any <i>investments</i> that were at that date charged to secure borrowings made on behalf of the portfolio; and (ii) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period and a comparison with the previous period. |
| (c) | <i>Transactions</i> and changes in composition |
| | (i) a summary of the <i>transactions</i> entered into for the portfolio during the period and a comparison with the previous period; (ii) the aggregate of <i>money</i> and a summary of all <i>investments</i> transferred into and out of the portfolio during the period; and (iii) the aggregate of any interest payments, dividends and |

| | |
|-----|--|
| | other benefits received by the <i>firm</i> for the portfolio during that period and a comparison with the previous period. |
| (d) | <i>Charges and remuneration</i> |
| | If not previously advised in writing, a statement for the period of account: (i) of the aggregate <i>charges</i> of the <i>firm</i> and its <i>associates</i> ; and (ii) of any <i>remuneration</i> received by the <i>firm</i> or its <i>associates</i> or both from a third party in respect of the <i>transactions</i> entered into, or any other services provided, for the portfolio. |
| (e) | Movement in value of portfolio |
| | A statement of the difference between the value of the portfolio at the closing date of the period of account and its value at the starting date, having regard, during the period of account, to: (i) the aggregate of assets received from the <i>occupational pension scheme</i> and added to the portfolio; (ii) the aggregate of the value of assets transferred, or of amounts paid, to the <i>client</i> ; (iii) the aggregate income received on behalf of the <i>client</i> in respect of the portfolio; and (iv) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio. |

Record keeping: general

- 18.8A.19 G An *OPS firm* should ensure that it keeps a record of its compliance with the requirements in this section in accordance with SYSC 9.1.1R (General requirements) which contains general record-keeping requirements that apply to an *OPS firm*.

Record keeping: suitability

- 18.8A.20 R (1) An *OPS firm* must retain its records relating to suitability for a minimum period of three years.
- (2) The requirement in (1) does not apply if the *client* does not proceed with the recommendation.

Record keeping: client orders and transactions

- 18.8A.21 R The *rules* in COBS 18 Annex 2 (Record keeping: client orders and

transactions) apply to an *OPS firm*.