Conduct of Business Sourcebook

Conduct of Business Sourcebook

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Chapter 1

Application

1.1 General application

Designated investment business and long-term insurance business in relation to life policies

1.1.1 R This sourcebook applies to a *firm* with respect to the following activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*:

(1) [deleted]

(2) *designated investment business*;

(3) *long-term insurance business* in relation to *life policies*;

and activities connected with them.

Deposits (including structured deposits)

1.1.1A R This sourcebook applies to a *firm* with respect to activities carried on in relation to *deposits* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom* only as follows:

	Section / chapter	Application in relation to deposits
(1)	*Rules* in this sourcebook which implemented articles 24, 25, 26, 28 and 30 of *MiFID* (and related provisions of the *MiFID Delegated Directive*) (see COBS 1.1.1ADG).	A *MiFID investment firm*, a *third country investment firm* and a *MiFID optional exemption firm* when selling, or advising a *client* in relation to, a *structured deposit*.
(2)	COBS 4.6 (Past, simulated past and future performance)	*Communication* or *approval* of a *financial promotion* relating to a *structured deposit* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.
(3)	COBS 4.7 (Direct offer financial promotions)	*Communication* or *approval* of a *financial promotion* relating to a *cash deposit ISA*, *cash-only lifetime ISA* or *cash deposit CTF* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

(4)	COBS 4.10 (Systems and controls and approving and communicating financial promotions)	To the extent that other *rules* in COBS 4 apply.
(5)	COBS 13 (Preparing product information)	Producing a *cash-deposit ISA*, *cash-only lifetime ISA* or *cash-deposit CTF*.
(6)	COBS 14 (Providing product information to clients)	*Selling*, *personally recommending* or *arranging* the sale of a *cash-deposit ISA*, *cash-only lifetime ISA* or *cash-deposit CTF* to a *retail client*.
(7)	COBS 15 (Cancellation)	A cancellable contract between a *consumer* and a *firm*.

Structured deposits: further provisions

1.1.1AA R Except in ■ COBS 6.2B, in the *rules* referred to in ■ COBS 1.1.1AR(1) (and in any related *guidance*), references to:

(1) *investment services* and *designated investment business* include selling, or advising *clients* in relation to, *structured deposits*; and

(2) *financial instruments* and *designated investments* include *structured deposits*.

1.1.1AB UK Article 1(2) of the *MiFID Org Regulation* specifies how its provisions should be read where they apply to firms selling, or advising on, *structured deposits*.

> 1(2)References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements (so far as relevant) in Chapters II to IV of this Regulation.

1.1.1AC R A *third country investment firm* and a *MiFID optional exemption firm* must also comply with the provisions of the *MiFID Org Regulation* which relate to the *rules* which implemented the articles of *MiFID* referred to in ■ COBS 1.1.1AR(1), as modified by article 1(2) of the *MiFID Org Regulation*, when selling, or advising a *client* in relation to, a *structured deposit*.

1.1.1AD G The *rules* which implemented the provisions of *MiFID* and the *MiFID Delegated Directive* referred to in ■ COBS 1.1.1AR(1) can be found in the chapters of *COBS* in the following table and are followed by a 'Note:'.

COBS chapter	Description
COBS 2	Conduct of business obligations
COBS 3	Client categorisation
COBS 4	Communicating with clients, including financial promotions
COBS 6	Information about the firm, its services and remuneration
COBS 8A	Client agreements

1

COBS 9A	Suitability (MiFID provisions)
COBS 10A	Appropriateness (for non-advised services) (MiFID provisions)
COBS 11	Dealing and managing
COBS 14	Providing product information to clients
COBS 16A	Reporting information to clients (MiFID provisions)

[**Note:** article 1(4) of *MiFID*]

Electronic money

1.1.1B R ■ COBS 4.4.3 R, ■ COBS 5 (Distance communications), ■ COBS 15.2 (The right to cancel), ■ COBS 15.3 (Exercising a right to cancel), ■ COBS 15.4 (Effects of cancellation) and ■ COBS 15 Annex 1 (Exemptions from the right to cancel) apply to a *firm* with respect to the activity of *issuing electronic money* as set out in those provisions.

Application to TP firms and Gibraltar-based firms

1.1.1C R In addition to the application rules in *COBS* as relevant, *TP firms* and Gibraltar-based firms carrying on business from an establishment in the *United Kingdom* must also comply with the provisions in:

(1) ■ COBS 16.6.7AR (drawdown pensions: annual statements) and ■ COBS 16.6.8R to ■ COBS 16.6.13G (income withdrawals – annual statements);

(2) ■ COBS 19.10 (Drawdown, investment pathways and cash warnings).

(3) ■ COBS TP 2 paragraphs 2.8G to 2.8J (Other Transitional Provisions)

1.1.1D G Unless the contrary intention appears, a reference to Gibraltar-based firm in ■ COBS 1.1.1CR has the same meaning as in the *Gibraltar Order*.

Auction regulation bidding

1.1.1E R ■ COBS 5 (Distance communications) applies to a *firm* in relation to its carrying on of *auction regulation bidding*.

1.1.1C R [deleted]

Modifications to the general application rule

1.1.2 R The application of this sourcebook is modified in ■ COBS 1 Annex 1 according to the activities of a *firm* (Part 1) and its location (Part 2).

1.1.3 R The application of this sourcebook is also modified in the chapters to this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

Guidance

1.1.4 G *Guidance* on the application provisions is in ■ COBS 1 Annex 1 (Part 3).

1.1.5 G ■ PERG 13 contains general *guidance* on the *persons* and businesses to which the *UK* provisions which implemented *MiFID* apply.

1.1.6 G ■ PERG 16 contains general *guidance* on the businesses to which the *UK* provisions which implemented *AIFMD* apply. ■ FUND 1 contains *guidance* on the types of *AIFM*.

1.2 Markets in Financial Instruments Directive

References in COBS to the MiFID Org Regulation

1.2.1 G

(1) This sourcebook contains a number of provisions which transposed *MiFID*. A *rule* transposed a provision of *MiFID* if it is followed by a 'Note:' indicating the article of *MiFID* or the *MiFID Delegated Directive* which it transposed.

(2) In order to help *firms* which are subject to those requirements which implemented *MiFID* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the *MiFID Org Regulation*, marked with the status letters "UK".

(3) This sourcebook does not reproduce the *MiFID Org Regulation* in its entirety. A *firm* to which provisions of the *MiFID Org Regulation* applies should refer to Commission Delegated Regulation (EU) 2017/565 as published in the electronic version of the Official Journal of the European Union and as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

1.2.2 G

(1) In some cases, this sourcebook applies provisions of the *MiFID Org Regulation* to *firms* in relation to business other than their *MiFID business* as if those provisions were *rules*.

(2) Third country investment firms should also have regard to the rule in ■ GEN 2.2.22AR which concerns the application of the *MiFID Org Regulation* to such *firms*.

1.2.3 R

(1) Where this sourcebook, or the rule in ■ GEN 2.2.22AR, applies provisions of the *MiFID Org Regulation* as if they were *rules*, (2) applies to enable *firms* to correctly interpret and understand the application of those provisions.

(2) In this sourcebook, a word or phrase found in a provision marked "UK" and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
"ancillary services"	*ancillary service*
"client" and "potential client"	*client*
"competent authority"	*FCA*

"conditions specified in Article 3(2)"	*website conditions*
"derivative"	those *financial instruments* referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the *Regulated Activities Order*
"Directive 2009/65/EC"	*UCITS Directive*
"Directive 2014/65/EU"	*MiFID*
"distributing units in collective investment undertakings"	distributing units in a *UCITS*
"durable medium"	*durable medium*
"eligible counterparty"	*eligible counterparty*
"financial analyst"	*financial analyst*
"financial instrument"	*financial instrument* and (if the context requires) *designated investment* and *structured deposit*
"funds"	*client money* that a *firm* receives or holds for, or on behalf of, a *client* in the course of, or in connection with, its *MiFID business* and (if the context requires) its *equivalent business of a third country investment firm*.
"group"	as defined in section 421 of the *Act*
"investments"	*financial instrument* and (if the context requires) *designated investment* and *structured deposit*
"investment advice"	*personal recommendation*
"investment firm" and "firm"	*firm*
"investment research"	*investment research*
"investment service" and "investment services and activities"	*investment service* and *investment services and/or activities* or (if the context requires) *designated investment business*
"market maker"	*market maker*
"periodic statement"	*periodic statement*
"PRIIPs KID"	*key information document*
"portfolio management" and "portfolio management service"	*portfolio management*
"professional client"	*professional client*
"professional client covered by Part 2 of Schedule 1 to Regulation (EU) No 600/2014"	*per se professional client*
"professional client in accordance with Part 3 of Schedule 1 to Regulation (EU) No 600/2014"	*elective professional client*
"Regulation (EU) No. 1286/2014"	*PRIIPs Regulation*
"relevant person"	*relevant person*
"retail client"	*retail client*
"shall"	must

"tied agent"	*tied agent*
"UCITS KIID"	*key investor information document*

(3) In this sourcebook, where a reproduced provision of an article of the *MiFID Org Regulation* refers to another part of the *MiFID Org Regulation*, that other provision must also be read with reference to the table in (2).

1.2.4 G *Firms* to which provisions of the *MiFID Org Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked "UK" to assist in interpreting any such references or cross-references.

Interpretation – "in good time"

1.2.5 G

(1) Certain of the provisions in this sourcebook which implemented *MiFID* require *firms* to provide *clients* with information "in good time".

(2) In determining what constitutes the provision of information "in good time", a *firm* should take into account, having regard to the urgency of the situation, the *client's* need for sufficient time to read and understand the information before taking an investment decision.

(3) A *client* is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a *client* has no experience with, than a *client* considering a simpler or more familiar product or service, or where the *client* has relevant prior experience.

[**Note:** recital 83 of *MiFID*]
[**Note:** *ESMA* has issued a number of guidelines under article 16(3) of the *ESMA* Regulation in relation to certain aspects of *MiFID*. These include:

guidelines on certain aspects of the *MiFID* suitability requirements which also include guidelines on conduct of business obligations, 28 May 2018/ESMA35-43-869 (EN);

guidelines on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN); and

guidelines on complex debt instruments and *structured deposits*, 4 February 2016/ESMA/2015/1787 (EN)].

1.3 Insurance distribution

References in COBS to the IDD Regulation

1.3.1 G

(1) This sourcebook contains a number of provisions which transposed the *IDD*.

(2) In order to help *firms* which are subject to those requirements which implemented the *IDD* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the *IDD Regulation*, marked with the status letters "UK".

(3) This sourcebook does not reproduce the *IDD Regulation* in its entirety. A *firm* to which provisions of the *IDD Regulation* applies should refer to Commission Delegated Regulation (EU) 2017/2359 as published in the electronic version of the Official Journal of the European Union and as amended by the [Insurance Distribution (Amendment) (EU Exit) Regulations 2019].

1.3.2 G

In some cases, this sourcebook applies provisions of the *IDD Regulation* to *firms* as if those provisions were *rules*.

1.3.3 R

(1) Where this sourcebook applies provisions of the *IDD Regulation* as if they were *rules*, (2) applies to enable *firms* to correctly interpret and understand the application of those provisions.

(2) In this sourcebook, a word or phrase found in a provision marked "UK" and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
"advice"	*personal recommendation*
"competent authority"	*FCA*
"customer" and "potential customer"	*Client*
"durable medium"	*durable medium*
"financial instrument"	*financial instrument* and (if the context requires) *designated investment* and *structured deposit*

1

(1)	(2)
"insurance-based investment product"	*insurance-based investment product*
"insurance distribution"	*insurance distribution activities*
"insurance intermediary" and "intermediary"	*insurance intermediary*
"insurance product"	*life policy*
"insurance undertaking" and "undertaking"	*Insurer*
"shall"	Must

(3) In this sourcebook, where a reproduced provision of an article of the *IDD Regulation* refers to another part of the *IDD Regulation*, that other provision must also be read with reference to the table in (2).

1.3.4 G *Firms* to which provisions of the *IDD Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked "UK" to assist in interpreting any such references or cross-references.

Interpretation – "in good time"

1.3.5 G

(1) Certain provisions in this sourcebook which implemented *IDD* require *firms* to provide *clients* with information "in good time". There are also other provisions in this sourcebook which require information to be provided "in good time", for example, ■ COBS 6.1ZA.19AR.

(2) In determining what constitutes the provision of information "in good time", a *firm* should take into account, having regard to the urgency of the situation, the *client's* need for sufficient time to read and understand the information before taking an investment decision.

(3) A *client* is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a *client* has no experience with, than a *client* considering a simpler or more familiar product or service, or where the *client* has relevant prior experience.

Application (see COBS 1.1.2R)

Part 1: What?

Modifications to the general application of COBS according to activities

1. Eligible counterparty business

1.1 R The *COBS* provisions shown below do not apply to *eligible counterparty business* except, where the *eligible counterparty business* is in scope of the *IDD*, those provisions which implemented the *IDD* continue to apply.

COBS provision	Description
COBS 2 (other than COBS 2.1.1AR, COBS 2.2A and COBS 2.4)	Conduct of business obligations
COBS 4 (other than COBS 4.2, COBS 4.4.1 R, COBS 4.5A.9UK and COBS 4.7.-1AUK)	Communicating with clients including financial promotions
COBS 6.1	Information about the firm, its services and remuneration (non-MiFID and non insurance distribution provisions)
COBS 6.1ZA.16R	Information about costs and charges of different services or products (MiFID provisions)
COBS 6.1ZA.22R	Compensation information (MiFID provisions)
COBS 8	Client agreements (non-MiFID provisions)
COBS 8A (other than COBS 8A.1.5UK to COBS 8A.1.8G)	Client agreements (MiFID provisions)
COBS 10	Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)
COBS 10A	Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)
COBS 11.2A, COBS 11.2B and COBS 11.3	Best execution, quality of execution and client order handling
COBS 12.2.18UK	Labelling of non-independent research
COBS 14.3	Information about designated investments (non-MiFID provisions)
COBS 16	Reporting information to clients (non-MiFID provisions)

[**Note:** paragraphs 1 and 2 of article 30(1) of *MiFID*]

2. Transactions between an MTF operator and its users

2.1 R The *COBS* provisions (applicable to *MiFID business*) shown below do not apply to a transaction between an operator of an *MTF* and a member or participant in relation to the use of the *MTF*.

COBS provision	Description
COBS 2 (other than COBS 2.4)	Conduct of business obligations
COBS 4 (other than COBS 4.4.1R)	Communicating with clients, including financial promotions
COBS 6.1ZA	Information about the firm and compensation information (MiFID provisions)
COBS 8A	Client agreements (MiFID provisions)
COBS 10A	Appropriateness (for non-advised services) (MiFID provisions)
COBS 11.2A, COBS 11.2B, COBS 11.3 and COBS 11.4	Best execution, quality of execution, client order handling and client limit orders
COBS 14.3A	Information about financial instruments (MiFID provisions)
COBS 16A	Reporting information to clients (MiFID provisions)

[**Note:** article 19(4) of *MiFID*]

3. Transactions concluded on an MTF

3.1 R The *COBS* provisions in paragraph 2.1R do not apply to transactions concluded under the rules governing an *MTF* between members or participants of the *MTF* . However, the member or participant must comply with those provisions in respect of its *clients* if, acting on its *clients* behalf, it is executing their orders on an *MTF*.

[**Note:** article 19(4) of *MiFID*]

3A. Operators of OTFs

3A.1 G A *firm* which *operates an organised trading facility* should refer to MAR 5A.3.9R which specifies how the provisions in this sourcebook apply to that activity.

4. Transactions concluded on a regulated market

4.1 R In relation to transactions concluded on a *regulated market*, members and participants of the *regulated market* are not required to apply to each other the *COBS* provisions in paragraph 2.1R. However, the member or participant must comply with those provisions in respect of its *clients* if, acting on its *clients* behalf, it is executing their orders on a *regulated market*.

[**Note:** article 53(4) of *MiFID*]

5. Consumer credit products

5.1 R If a *firm*, in relation to its *MiFID business*, offers an *investment service* as part of a financial product that is subject to other provisions of *EU*-derived law related to *credit institutions* and consumer credits with respect to information requirements, that service is not subject to the *rules* in this sourcebook that implemented articles 24(3), (4) and (5) of *MiFID*.

[**Note:** article 24(6) of *MiFID*]

5.2 G This exclusion for consumer credit products is intended to apply on a narrow basis in relation to cases in which the *investment service* is a part of another financial product. It does not apply where the *investment service* is the essential or leading part of the financial product. It also does not apply where the service provided is a combination of an *investment service* and an *ancillary service* (for example, granting a credit for the execution of an order where the credit is instrumental to the buying or the selling of a *financial instrument*.) The exclusion also does not apply in relation to the sale of a *financial instrument* for the pur

pose of enabling a *client* to invest money to repay his obligations under a loan, mortgage or home reversion.

5A. Mortgages and mortgage bonds

5A.1 R The *rule* in paragraph 5A.2R applies in relation to an *MCD credit agreement* with a *consumer* which is subject to the provisions concerning the creditworthiness assessment of *consumers* in Chapter 6 of the *MCD* (which were transposed in MCOB 11 and MCOB 11A).

5A.2 R If an agreement with a *consumer* within paragraph 5A.1R has as a pre-requisite the provision to that same *consumer* of an *investment service* in relation to mortgage bonds satisfying the conditions in paragraph 5A.3R in order for the loan to be payable, refinanced or redeemed, that *investment service* is not subject to the *rules* in this sourcebook which implemented article 25 of *MiFID*.

5A.3 R The conditions in paragraph 5A.2R are that the mortgage bonds:

(1) are specifically issued to secure the financing of the *MCD credit agreement* in paragraph 5A.1R; and

(2) have terms which are identical to the *MCD credit agreement* in paragraph 5A.1R.

[**Note:** article 25(7) of *MiFID*]

6. Use of third party processors in life insurance distribution activities

6.1 R If a *firm* (or its *appointed representative* or, where applicable, its *tied agent*) outsources *insurance distribution activities* to a *third party processor*:

(1) the *firm* must accept responsibility for the acts and omissions of that *third party processor* conducting those outsourced activities; and

(2) any *COBS rule* requiring the *third party processor's* identity to be disclosed to *clients* must be applied as a requirement to disclose the *firm's* identity;

unless the *third party processor* is giving *personal recommendations* in relation to *advising on investments (except P2P agreements)*.

7. Modified meaning of regulated activities for UK AIFMs and UK UCITS management companies

7.1 R In determining whether a provision in *COBS* applies to a UK AIFM or a *UK UCITS management company*, an activity carried on by the *firm* which would be a *regulated activity* but for article 72AA (Managers of UCITS and AIFs) of the *Regulated Activities Order*, must be treated as a *regulated activity* carried on by the *firm*.

8. PRIIPs Regulation [deleted]

Part 2: Where?

Modifications to the general application according to location

1. EEA territorial scope rule: compatibility with European law [deleted]

2. Business with UK clients from overseas establishments

2.1 R (1) This sourcebook applies to a *firm* which carries on business with a *client* in the *United Kingdom* from an establishment overseas.

(2) But the sourcebook does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:

		(a)	would fall within the overseas *persons* exclusions in article 72 of the *Regulated Activities Order*; or
		(b)	would not be regarded as carried on in the *United Kingdom*.
2.2	G	[deleted]	

Part 3: Guidance

1.		**The main extensions, modifications and restrictions to the general application**
1.1	G	The general application of this sourcebook is modified in Parts 1 and 2 of Annex 1 and in certain chapters of the *Handbook*. The modification may be an extension of the general application. For example, COBS 4 (Communicating with clients, including financial promotions) has extended the general application.
1.2	G	[deleted]
1.3	G	Certain chapters of this sourcebook apply only to *firms* in relation to their *MiFID, equivalent third country or optional exemption business* and, in some of these chapters, specified *insurance distribution activities* (sometimes only in relation to *insurance-based investment products*) while others apply only to *firms' designated investment business* which is not *MiFID, equivalent third country or optional exemption business* or, in some of these chapters, certain *insurance distribution activities*.
1.4	G	COBS 18 (Specialist regimes) contains specialist regimes which modify the application of the provisions in this sourcebook for particular types of *firm* and business. To the extent that they are in conflict, the *rules* in COBS 18 on the application of the provisions in this sourcebook should be understood as overriding any other provision (whether in COBS 1 or an individual chapter) on the application of *COBS*.
2.		**The Single Market Directives and other directives** [deleted]

3. **MiFID: effect on territorial scope** [deleted]

4. **Insurance Distribution Directive: effect on territorial scope** [deleted]

5. **Solvency II Directive: effect on territorial scope** [deleted]

6. **Distance Marketing Directive: effect on territorial scope** [deleted]

7. **Electronic Commerce Directive: effect on territorial scope** [deleted]

8. **Investor Compensation Directive** [deleted]

9. **UCITS Directive: effect on territorial scope** [deleted]

10. **AIFMD: effect on territorial scope** [deleted]

11. **SRD: effect on territorial scope[deleted]**

Chapter 2

Conduct of business obligations

2

2.1 Acting honestly, fairly and professionally

The client's best interests rule

2.1.1 R

(1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client's best interests rule*).

(2) This *rule* applies:

(a) in relation to *designated investment business* carried on for a *retail client*;

(b) in relation to *MiFID, equivalent third country or optional exemption business*, for any *client*; and

(c) in relation to *insurance distribution*, for any *client*.

(3) For a *management company*, this *rule* applies in relation to any *UCITS scheme* the *firm* manages.

[**Note:** article 24(1) of *MiFID*, article 17(1) of the *IDD* and article 14(1)(a) and (b) of the *UCITS Directive*]

Business with eligible counterparties

2.1.1A R

In relation to its *eligible counterparty business*, a *firm* must act honestly, fairly and professionally, taking into account the nature of the *eligible counterparty* and its business.

[**Note:** article 30(1) of *MiFID*]

Exclusion of liability

2.1.2 R

A *firm* must not, in any communication relating to *designated investment business* seek to:

(1) exclude or restrict; or

(2) rely on any exclusion or restriction of;

any duty or liability it may have to a *client* under the *regulatory system*.

2.1.3 G

(1) In order to comply with the *client's best interests rule*, a *firm* should not, in any communication to a *retail client* relating to *designated investment business*:

(a) seek to exclude or restrict; or

(b) rely on any exclusion or restriction of;

any duty or liability it may have to a *client* other than under the *regulatory system*, unless it is honest, fair and professional for it to do so.

(2) The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

AIFMs' best interests rules

2.1.4 R A *full-scope UK AIFM* must, for all *AIFs* it manages:

(1) act honestly, fairly and with due skill care and diligence in conducting their activities;

(2) act in the best interests of the *AIF* it manages or the investors of the AIF it manages and the integrity of the market;

(3) treat all investors fairly; and

(4) not allow any investor in an *AIF* to obtain preferential treatment, unless such preferential treatment is disclosed in the relevant *AIF's instrument constituting the fund*.

[**Note:** article 12(1)(a), (b) and (f) and article 12(1) last paragraph of *AIFMD*]

Subordinate measures for alternative investment fund managers

2.1.5 G Articles 16 to 29 of the *AIFMD level 2 regulation* provide detailed rules supplementing the relevant provisions of Article 12(1) of *AIFMD*.

2

2.2 Information disclosure before providing services (other than MiFID and insurance distribution)

Application

2.2.-1 R

(1) [deleted]

(2) This section applies in relation to *designated investment business* (other than *MiFID, equivalent third country or optional exemption business* or *insurance distribution activities*), carried on for a *retail client*:

(a) in relation to a *derivative*, a *warrant*, a *non-readily realisable security*, a *speculative illiquid security*, a *P2P agreement*, or *stock lending activity*, but as regards the matters in ■ COBS 2.2.1R (1)(b) only; and

(b) in relation to a *retail investment product*, but as regards the matters in ■ COBS 2.2.1R (1)(a) and ■ (d) only.

(3) Where a *rule* in this section applies to a *firm* carrying on *designated investment business* in relation to a *speculative illiquid security* the *rule* also applies to:

(a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of ■ GEN 2.2.26R); and

(b) a Gibraltar-based firm (having the same meaning as in the *Gibraltar Order*) to the extent that the *rule* does not already apply to such a Gibraltar-based firm as a result of ■ GEN 2.3.1R).

2.2.-1A G

■ COBS 2.2A (Information disclosure before providing services (MiFID and insurance distribution)) contains the information disclosure requirements applying to a *firm* carrying on *MiFID, equivalent third country or optional exemption business* and *insurance distribution activities*.

Information disclosure before providing services

2.2.1 R

(1) A *firm* must provide appropriate information in a comprehensible form to a *client* about:

(a) the *firm* and its services;

(b) *designated investments* and proposed investment strategies; including appropriate guidance on and warnings of the risks associated with investments in those *designated investments* or in respect of particular investment strategies;

(c) execution venues; and

(d) costs and associated charges;

so that the *client* is reasonably able to understand the nature and risks of the service and of the specific type of *designated investment* that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

(3) [deleted]

(4) [deleted]

2.2.2 G A *firm* to which the rule on providing appropriate information (■ COBS 2.2.1 R) applies should also consider the *rules* on disclosing information about a *firm*, its services, costs and associated charges and *designated investments* in ■ COBS 6.1 and ■ COBS 14.

Disclosure of commitment to the Financial Reporting Council's Stewardship Code

2.2.3 R A *firm*, other than a *venture capital firm*, which is *managing investments* for a *professional client* that is not a natural person must disclose clearly on its website, or if it does not have a website in another accessible form:

(1) the nature of its commitment to the Financial Reporting Council's Stewardship Code; or

(2) where it does not commit to the Code, its alternative investment strategy.

2

2.2A Information disclosure before providing services (MiFID and insurance distribution provisions)

Application

2.2A.1 R This section applies to a *firm*:

in relation to its *MiFID, equivalent third country or optional exemption business*;

carrying on *insurance distribution activities* in relation to:

(a) an *insurance-based investment product* for any *client*; and/or

(b) any other *life policy* for a *retail client* but as regards the matters in COBS 2.2A.2R(1)(a) and (d) only.

Information disclosure in good time

2.2A.2 R (1) A *firm* must provide appropriate information in good time to a *client* with regard to:

(a) the *firm* and its services;

(b) (for *financial instruments*) the *financial instruments*, proposed investment strategies and execution venues;

(c) (for *insurance-based investment products*) the distribution of *insurance-based investment products* including at least appropriate guidance on, and warnings of, the risks associated with the *insurance-based investment product* or in respect of particular investment strategies proposed; and

(d) all costs and related charges.

[**Note:** article 24(4) of *MiFID* and article 29(1)(b) of the *IDD*]

(2) That information may be provided in a standardised format.

2.2A.2A R For an *insurance-based investment product*, a *firm* must provide the information in good time prior to the conclusion of the contract.

[**Note:** first paragraph of article 29(1) of the *IDD*]

2.2A.3 R (1) A *firm* must provide the information required by this section in a comprehensible form in such a manner that a *client* is reasonably able to understand the nature and risks of the *investment service* and of

the specific type of *financial instrument* or *life policy* that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

[**Note:** article 24(5) of *MiFID* and last paragraph of article 29(1) the *IDD*]

Related rules

2.2A.4 G A *firm* to which the *rule* on providing appropriate information (■ COBS 2.2A.2R) applies should also consider the *rules* on disclosing information about a *firm*, its services, costs and associated charges, *financial instruments* and *life policies* ■ COBS 6.1ZA, ■ COBS 9A.3, ■ COBS 14.3 and ■ COBS 14.3A.

Disclosure of commitment to the Financial Reporting Council's Stewardship Code

2.2A.5 R A *firm* must comply with the *rule* in ■ COBS 2.2.3R (Disclosure of commitment to the Financial Reporting Council's Stewardship Code).

2

2.2B SRD requirements

Application: Who?

2.2B.1 R This section applies to:

(1) a *UK MiFID investment firm* that provides *portfolio management* services to investors;

(2) a *third country investment firm* that provides *portfolio management* services to investors;

(3) a *UK UCITS management company*;

(4) an *ICVC* that is a *UCITS scheme* without a separate *management company*; and

(5) a *full-scope UK AIFM*.

[**Note:** article 2(f) of *SRD*]

Application: What?

2.2B.2 R This section applies to the extent that the *firm* is investing (or has invested) on behalf of investors in *shares* traded on a *regulated market*.

2.2B.3 G The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the *United Kingdom*.

Application: Where?

2.2B.4 R (1) This section applies in relation to activities carried on by a *firm* from an establishment in the *United Kingdom*.

(2) [deleted]

Engagement policy and disclosure of information

2.2B.5 R A *firm* must either:

(1) (a) develop and publicly disclose an *engagement policy* that meets the requirements of COBS 2.2B.6R (an "engagement policy"); and

(b) publicly disclose on an annual basis how its *engagement policy* has been implemented in a way that meets the requirements of ■ COBS 2.2B.7R; or

(2) publicly disclose a clear and reasoned explanation of why it has chosen not to comply with any of the requirements imposed by (1).

[**Note:** article 3g(1) and (1)(a) of *SRD*]

2.2B.6 R The *engagement policy* must describe how the *firm*:

(1) integrates shareholder engagement in its investment strategy:

(2) monitors investee companies on relevant matters, including:

(a) strategy;

(b) financial and non-financial performance and risk;

(c) capital structure; and

(d) social and environmental impact and corporate governance;

(3) conducts dialogues with investee companies;

(4) exercises voting rights and other rights attached to *shares*;

(5) cooperates with other shareholders;

(6) communicates with relevant stakeholders of the investee companies; and

(7) manages actual and potential conflicts of interests in relation to the *firm's* engagement.

[**Note:** article 3g(1)(a) of *SRD*]

2.2B.7 R (1) The annual disclosure must include a general description of voting behaviour, an explanation of the most significant votes and reporting on the use of the services of *proxy advisors*.

(2) (a) Subject to (b), a *firm* must publicly disclose how it has cast votes in the general meetings of companies in which it holds *shares*.

(b) A *firm* is not required to disclose votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.

[**Note:** article 3g(1)(b) of *SRD*]

2.2B.8 R The applicable disclosures or information referred to in ■ COBS 2.2B.5R to ■ COBS 2.2B.7R must be made available free of charge on the *firm's* website.

[**Note:** article 3g(2) of *SRD*]

Transparency of asset managers

2.2B.9 R

(1) This *rule* applies where a *firm* invests on behalf of an *SRD institutional investor*, whether on a discretionary client-by-client basis or through a collective investment undertaking.

(2) The *firm* must disclose to the relevant *SRD institutional investor*, on an annual basis, how its investment strategy and the implementation of it:

(a) complies with the arrangement referred to in (1); and

(b) contributes to the medium- to long-term performance of the assets of the *SRD institutional investor* or of the *fund*.

(3) The disclosure must include reporting on:

(a) the key material medium- to long-term risks associated with the investments;

(b) portfolio composition;

(c) turnover and turnover costs;

(d) the use of *proxy advisors* for the purpose of engagement activities;

(e) the *firm's* policy on securities lending and how that policy is applied to supports the *firm's* engagement activities if applicable, particularly at the time of the general meeting of the investee companies;

(e) whether and, if so, how, the *firm* makes investment decisions based on evaluation of medium- to long-term performance of an investee company, including non-financial performance; and

(g) whether and, if so, which conflicts of interests have arisen in connection with engagement activities and how the *firm* has dealt with these conflicts.

[**Note:** article 3i(1) of *SRD*]

2.2B.10 G

A *firm* may provide the disclosure in ■ COBS 2.2B.9R by making the relevant information publicly available.

2.3 Inducements relating to business other than MiFID, equivalent third country or optional exemption business and insurance-based investment products

Interpretation

2.3.-1 R In this section 'giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*' includes:

(1) giving advice or assistance to an employer on the operation of such a scheme;

(2) taking, or helping the employer to take, the steps that must be taken to enable an employee to become a member of such a *scheme*; and

(3) giving advice to an employee, pursuant to an agreement between the employer and the adviser, about the benefits that are, or might be, available to the employee as an actual or potential member of such a scheme.

Application

2.3.-1A R This section does not apply to:

(1) giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* where that scheme is a *qualifying scheme*;

(2) a *firm* in relation to *MiFID, equivalent third country or optional exemption business* (but see ■ COBS 2.3A (Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products)); or

(3) a *firm* carrying on an *insurance distribution activity* in relation to an *insurance-based investment product*.

2.3.-1B G The rules governing fees, commissions and non-monetary benefits which may be paid or provided in respect of *qualifying schemes* are found in ■ COBS 19.6.

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2.3.-1C G This section does not apply to the provision of *independent advice* or *restricted advice* on a *retail investment product* in the course of *MiFID, equivalent third country or optional exemption business*. A *firm* providing such a service should refer instead to ■ COBS 2.3A (Inducements relating to MiFID, equivalent third country or optional exemption business) and ■ COBS 6.1A (Adviser charging and remuneration).

Rule on inducements

2.3.1 R A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* carried on for a *client* other than:

(1) a fee, commission or non-monetary benefit paid or provided to or by the *client* or a *person* on behalf of the *client*; or

(2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:

(a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the *firm's* duty to act in the best interests of the *client*; and

(b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

(i) this requirement only applies to business other than the carrying on by a *UK UCITS management company* of the *collective portfolio management* activities of investment management and administration for the relevant *scheme* if it includes:

(A) giving a *personal recommendation* in relation to a *retail investment product*, *pension transfer*, *pension conversion*, *pension opt-out* or *P2P agreement*; or

(B) giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*;

(ii) where this requirement applies to business other than the carrying on by a *UK UCITS management company* of the *collective portfolio management* activities of investment management and administration for the relevant *scheme*, a *firm* is not required to make a disclosure to the *client* in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-monetary benefits in ■ COBS 2.3.15 G as though that table were part of this *rule* for this purpose only;

(iii) this requirement does not apply to a *firm* giving *basic advice*; and

(c) in relation to the carrying on by a *UK UCITS management company* or *EEA UCITS management company* of the collective portfolio management activities of investment management and administration for the relevant *scheme* or when carrying on a

regulated activity in relation to a *retail investment product* or a *pension transfer*, *pension conversion* or *pension opt-out* or when *advising on P2P agreements*, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or

(3) proper fees which enable or are necessary for the provision of *designated investment business*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the *firm's* duties to act honestly, fairly and professionally in accordance with the best interests of its *clients*; or

(4) an *employer or trustee funded pension advice charge*.

[**Note:** articles 29(1) and 29(2) of the *UCITS implementing Directive*]

2.3.1A R ■ COBS 2.3.1 R applies to a *UK UCITS management company* when providing *collective portfolio management* services, as if references to a *client*, were references to any *UCITS* it manages

[**Note:** article 29(1) of the *UCITS implementing Directive*]

2.3.2 R A *firm* will satisfy the disclosure obligation under this section if it:

(1) discloses the essential arrangements relating to the fee, commission or non-monetary benefit in summary form;

(2) undertakes to the *client* that further details will be disclosed on request; and

(3) honours the undertaking in (2).

[**Note:** article 29(2) of the *UCITS implementing Directive*]

2.3.2A R ■ COBS 2.3.2 R applies to a *UK UCITS management company* when providing *collective portfolio management* services, as if references to a *client* were references to a *Unitholder* of the *scheme*.

[**Note:** article 29(2) of the *UCITS implementing Directive*]

Guidance on inducements

2.3.3 G The obligation of a *firm* to act honestly, fairly and professionally in accordance with the best interests of its *clients* includes both the *client's best interests rule* and the duties under *Principles* 1 (integrity), 2 (skill, care and diligence) and 6 (customers' interests).

2.3.4 G [deleted]

2.3.4A G A *UCITS management company* is subject to specific *rules* on inducements and research in ■ COBS 18.5B when *executing* orders for *financial instruments*

for, or on behalf of, the *UCITS* it manages (see ■ COBS 18.5B.6R and ■ COBS 18 Annex 1).

2

2.3.5 G For the purposes of this section, a non-monetary benefit would include the direction or referral by a *firm* of an actual or potential item of *designated investment business* to another *person*, whether on its own initiative or on the instructions of an *associate*.

2.3.6 G [deleted]

2.3.6A G ■ COBS 6.1A (Adviser charging and remuneration), ■ COBS 6.1B (Retail investment product provider and operator of an electronic system in relation to lending and platform service provider requirements relating to adviser charging and remuneration), ■ COBS 6.1C (Consultancy charging and remuneration) and ■ COBS 6.1D (Product provider requirements relating to consultancy charging and remuneration) set out specific requirements as to when it is acceptable for a *firm* to pay or receive commissions, fees or other benefits:

(1) relating to the provision of a *personal recommendation* on *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs* or *P2P agreements*; or

(2) for giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

2.3.7 G The fact that a fee, commission or non-monetary benefit is paid or provided to or by an *appointed representative* does not prevent the application of the *rule* on inducements.

2.3.8 G [deleted]

Paying commission on non-advised sales of packaged products

2.3.9 G The following *guidance* and *evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* if a *firm* sells or *arranges* the sale of a *packaged product* for a *retail client*.

2.3.10 E (1) If a *firm* is required to disclose *commission* (see ■ COBS 6.4) to a *client* in relation to the sale of a *packaged product* (other than in relation to arrangements between firms that are in the same *immediate group*) the firm should not enter into any of the following:

(a) volume overrides, if *commission* paid in respect of several transactions is more than a simple multiple of the *commission* payable in respect of one transaction of the same kind; and

(b) an agreement to indemnify the payment of *commission* on terms that would or might confer an additional financial benefit on the recipient in the event of the *commission* becoming repayable.

(2) Contravention of (1) may be relied upon as tending to establish contravention of the *rule* on inducements (■ COBS 2.3.1 R).

2.3.11 G

(1) If a *firm* enters into an arrangement with another firm under which it makes or receives a payment of *commission* in relation to the sale of a *packaged product* that is increased in excess of the amount disclosed to the *client*, the *firm* is likely to have breached the *rules* on disclosure of charges, remuneration and commission (see ■ COBS 6.4) and, where applicable, the *rule* on inducements in ■ COBS 2.3.1R (2)(b), unless the increase is attributable to an increase in the *premiums* or contributions payable by that *client*.

Providing credit and other benefits to firms that give personal recommendations on retail investment products or P2P agreements

2.3.11A G

The following *guidance* and *evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* in relation to a *personal recommendation* of a *retail investment product* or *P2P agreement* to a *retail client*.

2.3.12 E

(1) This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations* to *retail clients* on *retail investment products* or *P2P agreements*, except where the relevant transaction is between *persons* who are in the same *immediate group*.

(2) A *retail investment product* provider or *operator of an electronic system in relation to lending* should not take any step which would result in it:

(a) having a direct or indirect holding of the capital or *voting power* of a firm in (1); or

(b) providing *credit* to a *firm* in (1) (other than continuing to facilitate the payment of an *adviser charge* or *consultancy charge* where it is no longer payable by the *retail client*, as described in ■ COBS 6.1A.5 G or ■ COBS 6.1C.6 G);

unless all the conditions in (4) are satisfied. A *retail investment product* provider or *operator of an electronic system in relation to lending* should also take reasonable steps to ensure that its *associates* do not take any step which would result in it having a holding as in (a) or providing *credit* as in (b).

(3) A *firm* in (1) should not take any step which would result in a *retail investment product* provider or *operator of an electronic system in relation to lending* having a holding as in (2)(a) or providing *credit* as in (2)(b), unless all the conditions in (4) are satisfied.

(4) The conditions referred to in (2) and (3) are that:

(a) the holding is acquired, or *credit* is provided, on commercial terms, that is terms objectively comparable to those on which an independent *person* unconnected to a *retail investment product* provider or *operator of an electronic system in relation to*

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lending would, taking into account all relevant circumstances, be willing to acquire the holding or provide credit;

(b) the *firm* (or, if applicable, each of the *firms*) taking the step has reliable written evidence that (a) is satisfied;

(c) there are no arrangements, in connection with the holding or *credit*, relating to the channelling of business from the *firm* in (1) to the *retail investment product* provider or *operator of an electronic system in relation to lending* ; and

(d) the *retail investment product* provider or *operator of an electronic system in relation to lending* is not able, and none of its *associates* is able, because of the holding or *credit*, to exercise any influence over the *personal recommendations* made in relation to *retail investment products* or *P2P agreements* given by the *firm* or the advice given, or services provided to, an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

(5) In this *evidential provision*, in applying (2) and (3) any holding of, or *credit* provided by, a *retail investment product* provider's or *operator of an electronic system in relation to lending's associate* is to be regarded as held by, or provided by, that *retail investment product* provider or *operator of an electronic system in relation to lending*. .

(6) [deleted]

(7) Contravention of (2) or (3) may be relied upon as tending to establish contravention of the *rule* on inducements (■ COBS 2.3.1 R).

2.3.12A G Where a *retail investment product* provider or *operator of an electronic system in relation to lending*, or its *associate*, provides *credit* to a *retail client* of a *firm* making *personal recommendations* in relation to *retail investment products* or *P2P agreements* or giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*, this may create an indirect benefit for the *firm* and, to the extent that this is relevant, the provider of *retail investment products* or *operator of an electronic system in relation to lending* may need to consider the examples in ■ COBS 2.3.12E as if it had provided the *credit* to the *firm*.

2.3.13 G In considering the compliance of arrangements between members of the same *immediate group* with the *rule* on inducements (■ COBS 2.3.1 R), *firms* may wish to consider the *evidential provisions* in ■ COBS 2.3.10 E and ■ COBS 2.3.12 E, to the extent that these are relevant.

Reasonable non-monetary benefits

2.3.14 G (1) In relation to the sale of *retail investment products*, the table on reasonable non-monetary benefits (■ COBS 2.3.15 G) indicates the kind of benefits which are capable of enhancing the quality of the service provided to a *client* and, depending on the circumstances, are capable of being paid or received without breaching the *client's best interests rule*. However, in each case, it will be a question of fact whether these conditions are satisfied.

(2) The *guidance* in the table on reasonable non-monetary benefits is not relevant to non-monetary benefits which may be given by a *retail investment product* provider or its *associate* to its own *representatives*. The *guidance* in this provision does not apply directly to non-monetary benefits provided by a *firm* to another *firm* that is in the same *immediate group*. In this situation, the *rules* on *commission equivalent* (■ COBS 6.4.3 R), the requirements on a *retail investment product* provider making a *personal recommendation* in respect of its own *retail investment products* (■ COBS 6.1A.9 R) or the requirements on a *firm* giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* produced by the *firm* (■ COBS 6.1C.8 R) will apply.

2.3.15 G This table belongs to ■ COBS 2.3.14 G.

	Gifts, Hospitality and Promotional Competition Prizes
1	A *retail investment product* provider giving and a *firm* receiving gifts, hospitality and promotional competition prizes of a reasonable value.
	Promotion
2	A *retail investment product* provider assisting another *firm* to promote its *retail investment products* so that the quality of its service to *clients* is enhanced. Such assistance should not be of a kind or value that is likely to impair the recipient *firm's* ability to pay due regard to the interests of its *clients*, and to give advice on, and recommend, *retail investment products* available from the recipient *firm's* whole *range* or *ranges*.
	Joint marketing exercises
3	A *retail investment product* provider providing generic product literature (that is, letter heading, leaflets, forms and envelopes) that is suitable for use and distribution by or on behalf of another *firm* if: (a) the literature enhances the quality of the service to the *client* and is not primarily of promotional benefit to the *retail investment product* provider; and (b) the total costs (for example, packaging, posting, mailing lists) of distributing such literature to its *client* are borne by the recipient *firm*.
4	A *retail investment product* provider supplying another *firm* with 'freepost' envelopes, for forwarding such items as completed applications, medical reports or copy client agreements.
5	A *retail investment product* provider supplying product specific literature (for example, *key features documents*, minimum information) to another *firm* if: (a) the literature does not contain the name of any other *firm*; or (b) if the name of the recipient *firm* is included, the literature enhances the quality of the service to the *client* and is not primarily of promotional benefit to the recipient *firm*.
6	A *retail investment product* provider supplying draft articles, news items and *financial promotions* for publication in another *firm's* magazine, only if in each case any costs paid by the *product provider* for placing the articles and *financial promotions* are not more than market rate, and exclude distribution costs.

Seminars and conferences

7 A *retail investment product* provider taking part in a seminar organised by another *firm* or a third party and paying toward the cost of the seminar, if:

(a) its participation is for a genuine business purpose; and

(b) the contribution is reasonable and proportionate to its participation and by reference to the time and sessions at the seminar when its staff play an active role.

Technical services and information technology

8 A *retail investment product* provider supplying a 'freephone' link to which it is connected.

9 A *retail investment product* provider supplying another *firm* with any of the following:

(a) quotations and *projections* relating to its *retail investment products* and, in relation to specific *investment* transactions (or for the purpose of any scheme for review of past business), advice on the completion of forms or other *documents*;

(b) access to data processing facilities, or access to data, that is related to the *retail investment product* provider's business;

(c) access to third party electronic dealing or quotation systems that are related to the *retail investment product* provider's business; and

(d) software that gives information about the *retail investment product* provider's *retail investment products* or which is appropriate to its business (for example, for use in a scheme for review of past business or for producing *projections* or technical product information).

10 A *retail investment product* provider paying cash amounts or giving other assistance to a *firm* not in the same *immediate group* for the development of software or other computer facilities necessary to operate software supplied by the *retail investment product* provider, but only to the extent that by doing so it will generate equivalent cost savings to itself or *clients*.

11 A *retail investment product* provider supplying another *firm* with information about sources of mortgage finance.

12 A *retail investment product* provider supplying another *firm* with generic technical information in writing, not necessarily related to the *product provider's* business, when this information states clearly and prominently that it is produced by the *product provider* or (if different) supplying *firm*.

Training

13 A *retail investment product* provider providing another *firm* with training facilities of any kind (for example, lectures, venue, written material and software).

Travel and accommodation expenses

14 A *retail investment product* provider reimbursing another *firm's* reasonable travel and accommodation expenses when the other *firm*:

(a) participates in market research conducted by or for the *retail investment product* provider;

(b) attends an annual national event of a *United Kingdom* trade association, hosted or co-hosted by the *retail investment product* provider;

(c) participates in the *retail investment product* provider's training facilities (see 13);

(d) visits the *retail investment product* provider's *United Kingdom* office in order to:

(i) receive information about the *retail investment product* provider's administrative systems; or

(ii) attend a meeting with the *retail investment product* provider and an existing or prospective *client* of the receiving *firm*.

2.3.16 G In interpreting the table of reasonable non-monetary benefits, *retail investment product* providers should be aware that where a benefit is made available to one *firm* and not another, this is more likely to impair compliance with the *client's best interests rule* and that, where any benefits of substantial size or value (such as adviser training programmes or significant software) are made available to *firms* that are subject to the *rules* on adviser charging and remuneration (■ COBS 6.1A) or consultancy charging and remuneration (■ COBS 6.1C), these benefits should be made available equally across those *firms* if they are provided at all.

2.3.16A G In interpreting the table of reasonable non-monetary benefits, a *firm* that provides a *personal recommendation* in relation to a *retail investment product* to a *retail client* or gives advice, or provides a service, to an employer in connection with a *group personal pension scheme* or a *group stakeholder pension scheme* should be aware that acceptance of benefits on which the *firm* will have to rely for a period of time is more likely to impair compliance with the *client's best interests rule*. For example, accepting services which provide access to another *firm's* systems or software on which the *firm* will need to rely to gain access to the *firm's client* data in the future, would be likely to conflict with the *rule* on inducements (■ COBS 2.3.1R).

Application of guidance on reasonable non-monetary benefits

2.3.16B R The *guidance* on reasonable non-monetary benefits in ■ COBS 2.3.14G to ■ COBS 2.3.16AG does not apply to a *firm* which:

(1) makes *personal recommendations* to *retail clients* in relation to *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs* or *P2P agreements*, and to which ■ COBS 6.1A (Adviser charging and remuneration) applies; or

(2) is a *retail investment product* provider, a *platform service provider* or a *firm* which is an *operator of an electronic system in relation to lending* to which ■ COBS 6.1B (Retail investment product provider, operator of an electronic system relating to lending, and platform service provider requirements relating to adviser charging and remuneration) applies.

2.3.16C G However, ■ COBS 6.1A and ■ COBS 6.1B do permit minor non-monetary benefits which meet the relevant requirements set out in ■ COBS 6.1A.5AR(2).

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Record keeping: inducements

2.3.17 R

(1) A *firm* must make a record of the information disclosed to the *client* in accordance with ■ COBS 2.3.1R (2)(b) and must keep that record for at least five years from the date on which it was given.

(2) A *firm* must also make a record of each benefit given to another *firm* which does not have to be disclosed to the *client* in accordance with ■ COBS 2.3.1R (2)(b)(ii), and must keep that record for at least five years from the date on which it was given.

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products

Application

2.3A.1 R This section applies to a *firm*:

(1) in relation to its *MiFID, equivalent third country or optional exemption business*; and

(2) carrying on *insurance distribution activities* in relation to an *insurance-based investment product*.

Relationship with the adviser charging, product provider and platform service provider rules in COBS 6.1A, COBS 6.1B and COBS 6.1E

2.3A.2 G A *firm* which makes a *personal recommendation* to a *retail client* in the *United Kingdom* in relation to:

(a) a *retail investment product* in the course of carrying on *MiFID, equivalent third country* or *optional exemption business* with or for that *client*; or

(b) an *insurance-based investment product*,is also required to comply with the *rules* in ■ COBS 6.1A (Adviser charging and remuneration).

2.3A.3 G ■ COBS 6.1A provides, amongst other things, that a *firm* must only be remunerated for a *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*.

2.3A.4 G Where:

(1) the *firm*:

(a) is a *retail investment product* provider or a *platform service provider*; and

(b) carries on *MiFID, equivalent third country or optional exemption business*, or carries on *insurance distribution activities*,in relation to those activities; and

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(2) the *client* is a *retail client* in the *United Kingdom*,

the *firm* is required to comply with the *rules* in this section and in ■ COBS 6.1B (Retail investment product provider, operator of an electronic system relating to lending, and platform service provider requirements relating to adviser charging and remuneration) and, where relevant, ■ COBS 6.1E (Platform services: platform charges using a platform service for advising).

Rules on inducements

2.3A.5 R

(1) Except where ■ COBS 2.3A.6R applies, a *firm* must not:

(a) pay to or accept from any party (other than the *client* or a *person* on behalf of the *client*) any fee or commission; or

(b) provide to or receive from any party (other than the *client* or a *person* on behalf of the *client*) any non-monetary benefit.

(2) (1)(a) and (b) only apply in relation to fees, commissions or non-monetary benefits paid or accepted, or provided or received, in connection with:

(a) the provision of an *investment service* or an *ancillary service*; or

(b) the distribution of an *insurance-based investment product* or an ancillary service.

[**Note:** article 24(9) of *MiFID*, articles 22(3), 29(2) and 29(3) of the *IDD*]

2.3A.6 R

(1) ■ COBS 2.3A.5R does not apply to:

(a) a fee, commission or non-monetary benefit which:

(i) is designed to enhance the quality of the relevant service to the *client* (see ■ COBS 2.3A.8R and, also for an *insurance-based investment product*, ■ COBS 2.3A.9AUK); and

(ii) does not impair compliance with the *firm's* duty to act honestly, fairly and professionally in the best interests of the *client*;

(b) a payment or benefit which enables or is necessary for the provision of an *investment service*, or the distribution of an *insurance-based investment product*, by the *firm*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees and which, by its nature, cannot give rise to conflicts with the *firm's* duty to act honestly, fairly and professionally in the best interests of the *client*; or

(c) (in relation to *MiFID, equivalent third country or optional exemption business*) third party *research* received in accordance with ■ COBS 2.3B (see ■ COBS 2.3B.3R).

(2) Where a *firm* pays, provides, accepts or receives, a fee, commission or non-monetary benefit which falls within (1)(a), the *firm* must clearly disclose to the *client*:

(a) the existence and nature of the payment or benefit; and

(b) the amount of the payment or benefit or, where the amount cannot be ascertained, the method for calculating that amount.

(3) That information must be disclosed:

(a) prior to the provision of the relevant service; and

(b) in a manner that is comprehensive, accurate and understandable (see also ■ COBS 2.3A.10R (Disclosure of payments or benefits received from, or paid to, third parties)).

(4) Where applicable, a *firm* must inform a *client* of the mechanisms for transferring to the *client* the fee, commission, monetary or non-monetary benefit received in relation to the provision of the relevant service.

[**Note:** article 24(9) of *MiFID*, article 22(3) and 29(3) of the *IDD*]

2.3A.7 E A *firm* which fails to comply with ■ COBS 2.3A.5R is to be regarded as not fulfilling its obligations in relation to:

(1) conflicts of interest (see ■ SYSC 3.3 (for *insurers* and *managing agents*) and ■ SYSC 10 (for other *firms*)); and

(2) acting honestly, fairly and professionally in accordance with the best interests of its *clients* (see ■ COBS 2.1.1R).

[**Note:** article 24(9) of *MiFID*, article 29(2) and 29(3) of the *IDD*

Fees, commissions or non-monetary benefits which are designed to enhance the quality of a service

2.3A.8 R (1) For the purposes of ■ COBS 2.3A.6R(1)(a)(i), a fee, commission or non-monetary benefit is designed to enhance the quality of the relevant service to a *client* only if :

(a) it is justified by the provision of an additional or higher level service to the *client* and is proportional to the level of inducements received;

(b) it does not directly benefit the recipient *firm*, its *shareholders* or *employees* without tangible benefit to the *client*;

(c) it is justified by the provision of an ongoing benefit to the *client* in relation to an ongoing inducement; and

(d) the provision of the service by the *firm* to the *client* is not biased or distorted as a result of the fee, commission or non-monetary benefit.

(2) A *firm* must fulfil these conditions on an ongoing basis as long as the *firm* continues to pay or receive the fee, commission or non-monetary benefit.

[**Note:** article 11(2) and (3) of the *MiFID Delegated Directive*]

2.3A.9 R A fee, commission or non-monetary benefit may be justified for the purposes of ■ COBS 2.3A.8R(1)(a) where, for example, the *firm* provides:

(1) *restricted advice* on, and access to, a wide range of suitable *financial instruments* or *insurance-based investment products* including an

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appropriate number of *financial instruments* or *insurance-based investment products* from third party product providers having no close links with the *firm*; or

(2) *restricted advice* combined with:

(a) an offer to the *client*, at least on an annual basis, to assess the continuing suitability of the *financial instruments* or *insurance-based investment products* in which the *client* has invested; or

(b) another ongoing service that is likely to be of value to the *client* such as advice about the suggested optimal asset allocation of the *client*; or

(3) access, at a competitive price, to a wide range of *financial instruments* or *insurance-based investment products* that are likely to meet the needs of the *client*, including an appropriate number of *financial instruments* or *insurance-based investment products* from third party product providers having no close links with the *firm*, together with either the provision of added-value tools, such as objective information tools helping the *client* to take investment decisions or enabling the *client* to monitor, model and adjust the range of *financial instruments* or *insurance-based investment products* in which they have invested, or providing periodic reports of the performance and costs and charges associated with the *financial instruments* or *insurance-based investment products*.

[**Note:** article 11(2) of the *MiFID Delegated Directive*]

Additional requirements for the assessment of inducements: insurance-based investment products

2.3A.9A UK

8(1)An inducement or inducement scheme shall be considered to have a detrimental impact on the quality of the relevant service to the customer where it is of such a nature and scale that it provides an incentive to carry out insurance distribution activities in a way that is not in compliance with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.

8(2)For the purposes of assessing whether an inducement or inducement scheme has a detrimental impact on the quality of the relevant service to the customer, insurance intermediaries and insurance undertakings shall perform an overall analysis taking into account all relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer, and any organisational measures taken by the insurance intermediary or insurance undertaking carrying out distribution activities to prevent the risk of detrimental impact.They shall, in particular, consider the following criteria:

(a)whether the inducement or inducement scheme could provide an incentive to the insurance intermediary or insurance undertaking to offer or recommend a particular insurance product or a particular service to the customer despite the fact that the insurance intermediary or insurance undertaking would be able to offer a different insurance product or service which would better meet the customer's needs;

(b)whether the inducement or inducement scheme is solely or predominantly based on quantitative commercial criteria or whether it takes into account appropriate qualitative criteria, reflecting compliance with applicable regulations, the quality of services provided to customers and customer satisfaction;

(c)the value of the inducement paid or received in relation to the value of the product and the services provided;

(d)whether the inducement is entirely or mainly paid at the moment of the conclusion of the insurance contract or extends over the whole term of that contract;

(e)the existence of an appropriate mechanism for reclaiming the inducement in case the product lapses or is surrendered at an early stage or in case the interests of the customer have been harmed;

(f)the existence of any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales.

2(2)'inducement' means any fee, commission, or any non-monetary benefit provided by or to such an intermediary or undertaking in connection with the distribution of an insurance-based investment product, to or by any party except the customer involved in the transaction in question or a person acting on behalf of that customer;

2(3)'inducement scheme means a set of rules governing the payment of inducements, including the conditions under which the inducements are paid.

[**Note:** articles 2(2), 2(3) and 8 of the *IDD Regulation*

2.3A.9B R ■ COBS 2.3A.9AUK applies as if it was a *rule* to *firms* in relation to *insurance distribution activities* to which the *IDD Regulation* does not apply.

Disclosure of payments or benefits received from, or paid to, third parties

2.3A.10 R

(1) Prior to the provision of the relevant service, the *firm* must disclose to the *client* the information set out in ■ COBS 2.3A.6R(2) and, where applicable, ■ COBS 2.3A.6R(4).

(2) For these purposes, minor non-monetary benefits may be described in a generic way, but other non-monetary benefits received or paid by the *firm* in connection with a service provided to the *client* must be priced and disclosed separately.

[**Note:** article 11(5)(a) of the *MiFID Delegated Directive*]

2.3A.11 R Where a *firm* is unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead discloses to the *client* the method of calculating the relevant amount, the *firm* must also inform

the *client* of the exact amount of the payment or benefit received or paid on an ex-post basis.

[**Note:** article 11(5)(b) of the *MiFID Delegated Directive*]

2.3A.12 R

(1) Where inducements are received by the *firm* on an ongoing basis in relation to an *investment service* provided or in relation to the distribution of an *insurance-based investment product* to a *client*, the *firm* must inform, at least annually, that *client* about the actual amount of payments or benefits received.

(2) For these purposes, minor non-monetary benefits may be described in a generic way.

[**Note:** article 11(5)(c) of the *MiFID Delegated Directive*]

2.3A.13 R

In implementing the requirements of ■ COBS 2.3A.10R to ■ COBS 2.3A.12R, a *firm* must take into account the costs and charges *rules* in:

(1) (for *MiFID, equivalent third country or optional exemption business*) ■ COBS 6.1ZA.11R and ■ COBS 6.1ZA.12Rand article 50 of the *MiFID Org Regulation* (see ■ COBS 6.1ZA.14UK); and

(2) (for *insurance-based investment products*) ■ COBS 6.1ZA.11R to ■ COBS 6.1ZA.13R and ■ COBS 6.1ZA.15AR.

[**Note:** article 11(5) of the *MiFID Delegated Directive*]

2.3A.14 R

Each *firm* involved in a distribution channel which provides an *investment service*, an *ancillary service* or distributes an *insurance-based investment product* must comply with its obligations to make disclosures to its *clients*.

[**Note:** article 11(5) of the *MiFID Delegated Directive*]

Inducements relating to the provision of independent advice, restricted advice and portfolio management services to retail clients in the United Kingdom

2.3A.15 R

(1) This *rule* applies where a *firm* provides a *retail client* in the *United Kingdom* with:

(a) independent advice; or

(b) restricted advice; or

(c) portfolio management services.

(2) The *firm* must not accept any fees, commission, monetary or non-monetary benefits which are paid or provided by:

(a) any third party; or

(b) a *person* acting on behalf of a third party,

in relation to the provision of the relevant service to the *client*.

(2A) Where the *firm* provides *independent advice* or *restricted advice*, the *rule* in (2) applies in connection with:

(a) the *firm's business of advising*; or

(b) any other related service, where 'related service' has the same meaning as in ■ COBS 6.1A.6R.

(3) Paragraph (2) does not apply to:

(a) acceptable minor non-monetary benefits (see ■ COBS 2.3A.19R in relation to the provision of *investment services* and ■ COBS 6.1A.5AR in relation to the distribution of an *insurance-based investment product*); or

(b) third party *research* received in accordance with ■ COBS 2.3B (see ■ COBS 2.3B.3R).

[**Note:** see articles 24(7)(b) and 24(8) of *MiFID*; article 12(2) of the *MiFID Delegated Directive*]

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.16 R (1) This *rule* applies where a *firm* provides *independent advice* or *portfolio management* services to:

(a) a *retail client* outside the *United Kingdom*; or

(b) (for *investment services*) a *professional client*.

(2) In relation to the provision of the relevant service to the *client*, the *firm* must not:

(a) accept and retain any fees, commission or monetary benefits; or

(b) accept any non-monetary benefits other than acceptable minor non-monetary benefits (see ■ COBS 2.3A.19R and, in relation to the distribution of an *insurance-based investment product*, ■ COBS 6.1A.5AR) or third party *research* received in accordance with ■ COBS 2.3B (see ■ COBS 2.3B.3R),

where these are paid or provided by any third party or a *person* acting on behalf of a third party.

(3) With regard to paragraph (2), the *firm* must:

(a) return to the *client* as soon as reasonably possible after receipt any fees, commission or any monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the services provided to that *client*;

(b) transfer in full to the *client* all fees, commission or monetary benefits received from third parties in relation to the services provided to the *client*;

(c) establish and implement a policy to ensure that any fees, commission or any monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the provision of the services to the *client* are allocated and transferred to that *client*; and

(d) inform the *client* about the fees, commission or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the *client*.

[**Note:** articles 24(7)(b) and 24(8) of *MiFID*; article 12(1) and (2) of the *MiFID Delegated Directive*]

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2.3A.17 G ■ SYSC 4.1 (General requirements) sets out further organisational requirements relating to *firms*.

Fees, commission, and non-monetary benefits paid or provided by a person on behalf of the client

2.3A.18 G Fees, commission or non-monetary benefits paid or provided by a *person* on behalf of the *client* are acceptable only if that *person* is aware that such payments have been made on that *client's* behalf and the amount and frequency of any payment is agreed between the *client* and the *firm* and not determined by a third party. This could be the case where:

(1) a *client* pays a *firm's* invoice directly or it is paid by an independent third party who has no connection with the *firm* regarding the *investment service* provided to the *client* and is acting only on the instructions of the *client*; or

(2) cases where the *client* negotiates a fee for a service provided by a *firm* and pays that fee.

This would generally be the case for accountants or lawyers acting under a clear payment instruction from the *client* or where a *person* is acting as a mere conduit for the payment.

[**Note:** recital 75 to *MiFID*]

Acceptable minor non-monetary benefits

2.3A.19 R An acceptable minor non-monetary benefit is one which:

(1) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way (where applicable, in accordance with ■ COBS 2.3A.10R);

(2) is capable of enhancing the quality of service provided to the *client*;

(3) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;

(4) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and

(5) consists of:

(a) information or documentation relating to a *financial instrument* or an *investment service*, that is generic in nature or personalised to reflect the circumstances of an individual *client*;

(b) written material from a third party that is commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company, or where the third party *firm* is contractually engaged and paid by the *issuer* to produce such

material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any *firms* wishing to receive it, or to the general public;

(c) participation in conferences, seminars and other training events on the benefits and features of a specific *financial instrument* or an *investment service*;

(d) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under paragraph (c);

(e) research relating to an issue of *shares*, *debentures*, *warrants* or *certificates representing certain securities* by an *issuer*, which is:

(i) produced:

(A) prior to the issue being completed; and

(B) by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and

(ii) made available to prospective investors in the issue;

(f) research that is received so that the *firm* may evaluate the research provider's research service, provided that:

(i) it is received during a trial period that lasts no longer than three *months*;

(ii) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;

(iii) the trial period is not commenced with the research provider within 12 *months* from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and

(iv) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record of how the conditions in (i) to (iii) were satisfied for each such trial period;

(g) research on listed or unlisted companies with a market capitalisation below £200m, provided that it is offered on a rebundled basis or provided for free. The market capitalisation is to be calculated with reference to the average closing price of the *shares* of the company at the end of each *month* to 31 October for the preceding 24 *months*. For companies newly admitted to trading, determination of the threshold should be based on the market capitalisation at the close of day one trading and apply until the date of the next re-assessment (i.e. 31 October). For these purposes, *firms* may reasonably rely on the assessment of a third party that the research is on a company with a market capitalisation below £200m;

(h) third party research that is received by a *firm* providing *investment services* or *ancillary services* to *clients* where it relates to fixed income, currency or commodity instruments;

(i) research received from a research provider where the research provider is not engaged in execution services and is not part of a

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financial services group that includes an *investment firm* that offers execution or brokerage services;

(j) written material that is made openly available from a third party to any firm wishing to receive it or to the general public. "Openly available" in this context means that there are no conditions or barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a firm or a member of the public in order to access that material; or

(k) *corporate access services* which relate to listed or unlisted companies with a market capitalisation below £200m in accordance with ■ COBS 2.3A.19R 5(g).

[**Note:** articles 24(7)(b) and 24(8) of *MiFID*; article 12(2) and (3) of the *MiFID Delegated Directive* and article 72(3) of the *MiFID Org Regulation*]

2.3A.20 G ■ COBS 2.3A.8R sets out the conditions to be met if a fee, commission or non-monetary benefit is designed to enhance the quality of the service to a *client*. Those conditions are also likely to be relevant to *firms* considering whether a non-monetary benefit is capable of enhancing the quality of the service to a *client* for the purposes of the *rule* on acceptable minor non-monetary benefits (see ■ COBS 2.3A.19R(2)).

[**Note:** articles 24(7) and (8) of *MiFID* refer to minor non-monetary benefits that are capable of enhancing the quality of service provided to the *client*]

2.3A.21 G A non-monetary benefit that involves a third party allocating valuable resources to the *firm* is not a minor non-monetary benefit and accordingly is considered to impair compliance with the *firm's* duty to act in the *client's* best interest.

[**Note:** recital 30 to the *MiFID Delegated Directive*]

2.3A.22 G For the purposes of ■ COBS 2.3A.19R(4) and ■ (5)(a), non-substantive material or services consisting of short term market commentary on the latest economic statistics or company results or information on upcoming releases or events which are provided by a third party and which:

(1) contain only a brief unsubstantiated summary of the third party's own opinion on the information; and

(2) do not include any substantive analysis (e.g. where the third party simply reiterates a view based on an existing recommendation or substantive research),

can be deemed to be information relating to a *financial instrument* or *investment service* of a scale and nature such that it constitutes an acceptable minor non-monetary benefit.

[**Note:** recital 29 to the *MiFID Delegated Directive*]

2.3A.22A G In relation to ■ COBS 2.3A.19R 5(h), since the particular features of the fixed income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on

competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account research services.

Paying commission on non-advised sales of packaged products

2.3A.23 G The following *guidance* and *evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* if a *firm* sells or *arranges* the sale of a *packaged product* for a *retail client*.

2.3A.24 E

(1) If a *firm* is required to disclose commission (see ■ COBS 6.4 (Disclosure of charges, remuneration and commission)) to a *client* in relation to the sale of a *packaged product* (other than in relation to arrangements between *firms* that are in the same *immediate group*) the *firm* should not enter into any of the following:

(a) volume overrides, if commission paid in respect of several transactions is more than a simple multiple of the commission payable in respect of one transaction of the same kind; and

(b) an agreement to indemnify the payment of commission on terms that would or might confer an additional financial benefit on the recipient in the event of the commission becoming repayable.

(2) Contravention of (1) may be relied upon as tending to establish contravention of ■ COBS 2.3A.5R.

2.3A.25 G If a *firm* enters into an arrangement with another *firm* under which it makes or receives a payment of commission in relation to the sale of a *packaged product* that is increased in excess of the amount disclosed to the *client*, the *firm* is likely to have breached the *rules* on disclosure of charges, remuneration and commission (see ■ COBS 6.4) and, where applicable, the rules on inducements in ■ COBS 2.3A.6R(2) and ■ (3), unless the increase is attributable to an increase in the *premiums* or contributions payable by that *client*.

Providing credit and other benefits to firms that advise retail clients on retail investment products

2.3A.26 G The following *guidance* and *evidential provisions* provide examples of arrangements the *FCA* believes will breach the *client's best interests rule* in relation to a *personal recommendation* of a *retail investment product* to a *retail client*.

2.3A.27 E

This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as making *personal recommendations* to *retail clients* on *retail investment products*, except where the relevant transaction is between *persons* who are in the same *immediate group*.

A *retail investment product* provider should not take any step which would result in it:

(a) having a direct or indirect holding of the capital or *voting power* of a *firm* in (1); or

(b) providing *credit* to a *firm* in (1) (other than continuing to facilitate the payment of an *adviser charge* or *consultancy charge* where it is no longer payable by the *retail client*, as described in ■ COBS 6.1A.5G or ■ COBS 6.1C.6G);

unless all the conditions in (4) are satisfied. A *retail investment product* provider should also take reasonable steps to ensure that its *associates* do not take any step which would result in it having a holding as in (a) or providing *credit* as in (b).

A *firm* in (1) should not take any step which would result in a *retail investment product* provider having a holding as in (2)(a) or providing *credit* as in (2)(b), unless all the conditions in (4) are satisfied.

The conditions referred to in (2) and (3) are that:

(a) the holding is acquired, or *credit* is provided, on commercial terms, that is terms objectively comparable to those on which an independent *person* unconnected to a *retail investment product* provider would, taking into account all relevant circumstances, be willing to acquire the holding or provide *credit*;

(b) the *firm* (or, if applicable, each of the *firms*) taking the step has reliable written evidence that (a) is satisfied;

(c) there are no arrangements, in connection with the holding or *credit*, relating to the channelling of business from the *firm* in (1) to the *retail investment product* provider; and

(d) the *retail investment product* provider is not able, and none of its *associates* is able, because of the holding or *credit*, to exercise any influence over the *personal recommendations* made in relation to *retail investment products* given by the *firm*.

In this *evidential provision*, in applying (2) and (3) any holding of, or *credit* provided by, a *retail investment product* provider's *associate* is to be regarded as held by, or provided by, that *retail investment product* provider.

Contravention of (2) or (3) may be relied upon as tending to establish contravention of ■ COBS 2.3A.15R.

2.3A.28 G Where a *retail investment product* provider, or its *associate*, provides *credit* to a *retail client* of a firm making *personal recommendations* in relation to *retail investment products*, this may create an indirect benefit for the *firm* and, to the extent that this is relevant, the provider of *retail investment products* may need to consider the examples in ■ COBS 2.3A.27E as if it had provided the *credit* to the *firm*.

2.3A.29 G In considering the compliance of arrangements between members of the same *immediate group* with ■ COBS 2.3A.15R, *firms* may wish to consider the *evidential provisions* in ■ COBS 2.3A.24E and ■ COBS 2.3A.27E, to the extent that these are relevant.

Guidance on inducements

2.3A.30 G A *firm* which fails to comply with the rules on inducements will not meet its obligations in relation to conflicts of interest (see ■ SYSC 10) or the obligation to act honestly, professionally and fairly in accordance with the best interests of its *clients*.

[**Note:** article 24(9) of *MiFID*]

2.3A.31 G A *firm* is unlikely to meet its obligations relating to best execution (see ■ COBS 11.2A), inducements (in this section), and conflicts of interest (see ■ SYSC 10) where it receives payment, remuneration or commission from third parties (including those entities to whom or which it directs orders for execution) in relation to the execution of *client* orders. *Firms* should also have regard to the *FSA's* Guidance on the practice of 'Payment for Order Flow'.

[**Note:** for the *FSA's* Guidance on the practice of 'Payment for Order Flow' see: http://www.fca.org.uk/publication/finalised-guidance/fg12-13.pdf]

Record keeping: inducements

2.3A.32 R A *firm* must hold evidence that any fees, commission or non-monetary benefits paid or received by the *firm* are designed to enhance the quality of the relevant service to the *client* by:

(1) keeping an internal list of all fees, commission and non-monetary benefits received by the *firm* from a third party in relation to the provision of the service; and

(2) recording how the fees, commission and non-monetary benefits paid or received by the *firm*, or that the *firm* intends to use, enhance the quality of the services provided to the relevant *clients* and the steps taken in order not to impair the *firm's* compliance with the duty to act honestly, fairly and professionally in the best interests of the *client*.

[**Note:** article 11(4) of the *MiFID Delegated Directive*]

2.3A.33 G In relation to the *MiFID business* of a *firm*, article 72 and Annex 1 of the *MiFID Org Regulation* also make provision for the keeping of records on inducements.

[**Note:** article 72 and Annex 1 of the *MiFID Org Regulation*]

2.3A.34 R In relation to the *equivalent business of a third country investment firm* and *MiFID optional exemption business*, information disclosed to the *client* in accordance with ■ COBS 2.3A.6R(2), ■ (3) and ■ (4) and ■ COBS 2.3A.10R to ■ COBS 2.3A.12R must be retained in a medium that allows the storage of information in a way accessible for future reference by the *FCA*, and in such a form and manner that:

(1) the *FCA* is able to access it readily and to reconstitute each key stage of the processing of each transaction;

(2) it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;

(3) it is not possible for the records otherwise to be manipulated or altered;

(4) it can be exploited through information technology or any other efficient method of exploitation when analysis of the data cannot be easily carried out due to the volume and nature of the data; and

(5) the *firm's* arrangements comply with the record keeping requirements irrespective of the technology used.

2.3A.35 G In relation to the distribution of an *insurance-based investment product*, a *firm* should refer to ■ SYSC 3 (for insurers and managing agents) and ■ SYSC 9 (for other *firms*) for its obligations in relation to record keeping.

2.3B Inducements and research

Application

2.3B.1 R This section applies to a *firm* carrying on *MiFID, equivalent third country or optional exemption business*.

2.3B.2 G

(1) A *firm* providing *independent advice*, *restricted advice* or *portfolio management* services to *retail clients* in the *United Kingdom*, or which provides *independent advice* or *portfolio management* services to *retail clients* outside the *United Kingdom* or to *professional clients* is prohibited from receiving inducements (other than acceptable minor non-monetary benefits) in relation to those services under ■ COBS 2.3A.15R and ■ COBS 2.3A.16R. Compliance with ■ COBS 2.3B allows such a *firm* to receive third party *research* without breaching that prohibition.

(2) In addition, ■ COBS 2.3B enables *investment firms* other than those in (1) to receive *research* without subjecting it to an assessment under the inducements rule in ■ COBS 2.3A, as *research* acquired in accordance with this section will not constitute an inducement.

Receiving third party research without it constituting an inducement

2.3B.3 R Third party *research* that is received by a *firm* providing *investment services* or *ancillary services* to *clients* will not be an inducement under ■ COBS 2.3A.5R, ■ COBS 2.3A.15R or ■ COBS 2.3A.16R if it is received in return for either of the following:

(1) direct payments by the *firm* out of its own resources; or

(2) payments from a separate *research* payment account controlled by the *firm*, provided that the *firm* meets the requirements in ■ COBS 2.3B.4R relating to the operation of the account.

[**Note:** article 13(1)(a) and (b)(excl. (i) – (iv)) of the *MiFID Delegated Directive*]

Conditions relating to the operation of the research payment account

2.3B.4 R The requirements referred to in ■ COBS 2.3B.3R(2) for the operation of a *research* payment account are:

(1) the *research* payment account must only be funded by a specific *research* charge to *clients*, which must:

(a) only be based on a *research* budget set by the *firm* for the purpose of establishing the amount needed for third party *research* in respect of *investment services* rendered to its *clients*; and

(b) not be linked to the volume or value of transactions executed on behalf of *clients*;

(2) (a) the *firm* must set and regularly assess a *research* budget as an internal administrative measure as part of establishing a *research* payment account and agreeing the *research* charge with its *clients*; and

(b) the *research* budget must comply with ■ COBS 2.3B.7R, ■ COBS 2.3B.8R(2) and ■ COBS 2.3B.11R;

(3) the *firm* must be fully responsible for the *research* payment account; and

(4) the *firm* must regularly assess the quality of the *research* purchased, based on robust quality criteria, and its ability to contribute to better investment decisions for the *clients* who pay the *research* charge.

[**Note:** article 13(1)(b)(i-iv) and (2)(a) and (b) of the *MiFID Delegated Directive*]

2.3B.5 R A *firm* using a *research* payment account must provide the following information to *clients*:

(1) before the provision of an *investment service* or *ancillary service* to *clients*, information about the budgeted amount for *research* and the amount of the estimated *research* charge for each of them; and

(2) annual information on the total costs that each of them has incurred for third party *research*.

[**Note:** article 13(1) second subparagraph of the *MiFID Delegated Directive*]

2.3B.6 G In accordance with *Principle* 7 (communications with clients), a *firm* should inform *clients* in the annual information in ■ COBS 2.3B.5R(2) that they are entitled to request the information set out in ■ COBS 2.3B.20R(1).

2.3B.7 R A *firm* must ensure that:

(1) the total amount of *research* charges collected from *clients* under ■ COBS 2.3B.4R(1) does not exceed the *research* budget established under ■ COBS 2.3B.4R(2) (and, where relevant, amended under ■ COBS 2.3B.8R(2)); and

(2) the *research* budget and *research* payment account are not used to fund research generated internally by the *firm* itself.

[**Note:** article 13(4) and (6) of the *MiFID Delegated Directive*]

2.3B.8 R

(1) A *firm* must agree with *clients*, in the *firm's* investment management agreement or general terms of business:

(a) the *research* charge as budgeted by the *firm*; and

(b) the frequency with which the specific *research* charge will be deducted from the resources of the *client* over the year.

(2) A *firm* must not increase its *research* budget unless it has provided, in advance, clear information to relevant *clients* about such intended increases.

(3) If there is a surplus in a *research* payment account at the end of a period, the *firm* must have a process to:

(a) rebate those funds to relevant *clients*; or

(b) offset it against the *research* budget and charge for relevant *clients* calculated for the following period.

[**Note:** article 13(5) of the *MiFID Delegated Directive*]

(4) In calculating a rebate or offset as set out in (3), a *firm* must take reasonable steps to maintain a fair allocation of costs between *clients*.

2.3B.9 G

Information on increases in the *research* budget under ■ COBS 2.3B.8R(2) should be provided to relevant *clients* in good time before such increases are to take effect.

2.3B.10 G

A *firm* that operates arrangements for collecting *research* charges by deducting charges from those *clients'* resources should ensure that those arrangements comply with ■ CASS 8 (Mandates), as applicable.

Governance and oversight of research payment accounts

2.3B.11 R

For the purposes of ■ COBS 2.3B.4R(2), a *firm* must ensure that:

(1) the *research* budget is managed solely by the *firm* and is based on a reasonable assessment of the need for third party *research*;

(2) the allocation of the *research* budget to purchase third party *research* is subject to appropriate controls and *senior management* oversight to ensure it is managed and used in the best interests of the *firm's clients*; and

(3) the controls under (2) include a clear audit trail of:

(a) payments made to *research* providers; and

(b) how the amounts paid were determined with reference to:

(i) the quality criteria required by ■ COBS 2.3B.4R(4); and

(ii) the *firm's* policy for using third party *research* established under ■ COBS 2.3B.12R.

[**Note:** article 13(6) of the *MiFID Delegated Directive*]

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2.3B.12 R

(1) A *firm* using a *research* payment account must establish a written policy that sets out how the *firm* will:

(a) comply with all elements of ■ COBS 2.3B.4R(4); and

(b) address the extent to which *research* purchased through the *research* payment account may benefit *clients'* portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the *firm* will take to allocate such costs fairly to the various *clients'* portfolios.

(2) A *firm* must provide the policy established under (1) to their *clients*.

[**Note:** article 13(8) of the *MiFID Delegated Directive*]

2.3B.13 G

A *firm* should retain control over the overall spending for *research*, the collection of *client research* charges and the determination of payments.

[**Note:** recital (28) to the *MiFID Delegated Directive*]

2.3B.14 G

In setting a budget under ■ COBS 2.3B.4R(2), and in light of the obligation to fairly allocate costs under ■ COBS 2.3B.12R(1)(b), a *firm* may wish to consider setting a budget for a group of *clients* who would benefit from the same *research*, for example because they have portfolios that are managed according to similar investment strategies. It may be appropriate to operate a dedicated *research* payment account for such a group.

2.3B.15 G

Where a *firm* charges a *client* under ■ COBS 2.3B.4R(1), that charge should be for an amount of *money* owed to the *firm*. Therefore, provided it is collected by the *firm* only when that charge becomes due and payable, that *money* will not be *client money* held by the firm for the *client* who owed that charge (see ■ CASS 7.11.25R).

Other operational arrangements for research payment accounts

2.3B.16 R

If a *firm* uses an operational arrangement for the collection of the charge under ■ COBS 2.3B.4R(1) where that charge is not collected separately but alongside a transaction *commission*, the *firm* must still indicate a separately identifiable *research* charge and ensure that the arrangements comply fully with the conditions in ■ COBS 2.3B.4R and ■ COBS 2.3B.5R.

[**Note:** article 13(3) of the *MiFID Delegated Directive*]

2.3B.17 G

A *firm* should ensure that the cost of *research* funded by *client* charges is not:

(1) linked to the volume or value of services or benefits that are not *research*; or

(2) used to cover anything other than *research*, such as charges for execution.

[**Note:** recital 27 to the *MiFID Delegated Directive*]

2.3B.18 R For the purposes of ■ COBS 2.3B.3R and ■ COBS 2.3B.4R, a *firm* may delegate the administration of the *research* payment account to a third party, provided that the arrangement facilitates payments to *research* providers, in the name of the *firm*, for the purchase of third party *research*, without any undue delay and in accordance with the *firm's* instruction.

[**Note:** article 13(7) of the *MiFID Delegated Directive*]

2.3B.19 G

(1) In order that a *firm* retains sufficient control, and is responsible for, a *research* payment account when relying on a third party to administer it, the *firm* should consider whether its arrangements with that third party will ensure that:

(a) the *firm* can collect *client research* charges relating to a specific *research* budget into a separate *research* payment account for that budget, as cleared funds, without undue delay (and, in any event, no later than 30 *days* after deduction from the *client's* account);

(b) the *firm* retains sole, full and absolute discretion over the use of the account and the making of payments or rebates;

(c) *research* payment account monies are ring-fenced and separately identifiable from the assets of the third party or, where the third party administrator is a *bank*, are held on deposit for the *firm*; and

(d) the third party provider has, or its creditors on insolvency have, no right of access or recourse to the *research* payment account for its own benefit, for example to offset other fees owed by the *firm* or for use as collateral.

(2) The *firm* remains fully responsible for discharging all of its obligations to its *clients* set out in ■ COBS 2.3B regardless of any arrangements it makes with third parties, and should ensure it acts in the best interests of its *clients* when deducting *research* charges from their accounts and procuring *research*.

Disclosure on request of payments made from a research payment account

2.3B.20 R

(1) Where a *firm* operates a *research* payment account, it must provide on request to its *clients* a summary of:

(a) the providers paid from this account;

(b) the total amount they were paid over a defined period;

(c) the benefits and services received by the *firm*; and

(d) how the total amount spent from the account compares to the budget set by the *firm* for that period, noting any rebate or carry-over if residual funds remain in the account.

(2) A *firm* must also be able to provide the information in paragraph (1) to the *FCA* on request for all *research* payment accounts.

[**Note:** article 13(2) of the *MiFID Delegated Directive*]

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Research for the purposes of research payment accounts

2.3B.21 R A *firm* must only use monies in a *research* payment account established under ■ COBS 2.3B.3R(2) to pay for *research* or to pay a rebate to *clients* in accordance with ■ COBS 2.3B.8R(3)(a).

2.3B.22 G A *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 inducements *rules* under ■ COBS 2.3A.15R or ■ COBS 2.3A.16R.

2.3B.23 G Examples of goods or services that the *FCA* does not regard as *research*, and as a result could not be paid for from *research* payment accounts, include:

(1) post-trade analytics;

(2) price feeds or historical price data that have not been analysed or manipulated in order to present the *firm* with meaningful conclusions;

(3) services relating to the valuation or performance measurement of portfolios;

(4) seminar fees;

(5) corporate access services;

(6) subscriptions for publications;

(7) travel, accommodation or entertainment costs;

(8) order and execution management systems;

(9) membership fees to professional associations;

(10) direct *money* payments; and

(11) administration of a *research* payment account.

2.3B.24 G A *firm* should not enter into any arrangements relating to the receipt of, and payment for, third party *research*, whether acquired in accordance with ■ COBS 2.3B.3R(1) or ■ (2), that would compromise its ability to meet its best execution obligations as applicable under ■ COBS 11.2A.

2.3C Research and execution services

Application

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

(1) a *firm* carrying on *MiFID, equivalent third country or optional exemption business*; or

(2) an *investment firm* authorised under the *UK* provisions which implemented *MiFID* that is not within (1); or

(3) a *UCITS management company*; or

(4) a *full-scope UK AIFM*; or

(5) a *small authorised UK AIFM*; or

(6) a *residual CIS operator*; or

(7) [deleted]

(8) an *OPS firm*.

Requirement on a firm that executes orders and provides research to price and supply services separately

2.3C.2 R A *firm* providing execution services must:

(1) identify separate charges for its execution services that only reflect the cost of executing the transaction;

(2) subject each other benefit or service (other than an acceptable minor non-monetary benefit in ■ COBS 2.3A.19R) which it provides to *persons* listed in ■ COBS 2.3C.1R(1) to ■ (6) to a separately identifiable charge; and

(3) ensure that the supply of, and charges for, other benefits or services under (2) is not influenced or conditioned by levels of payment for execution services.

[**Note:** article 13(9) of the *MiFID Delegated Directive*]

2.3C.3 R A *firm* providing both execution and *research* services must price and supply them separately.

2.3C.4 G Compliance with ■ COBS 2.3C.2R is intended to enable a *firm* subject to ■ COBS 2.3A.15R and ■ COBS 2.3A.16R to comply with its obligation not to accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the provision of the service to *clients*.

[**Note:** recital 26 to the *MiFID Delegated Directive*]

2.4 Agent as client and reliance on others

2.4.1 R This section applies to a *firm* that is conducting *designated investment business* or *ancillary activities* or, in the case of *MiFID, equivalent third country or optional exemption business*, other *ancillary services*.

2.4.2 G This section is not relevant to, nor does it affect:

(1) the question of who is the *firm's* counterparty for prudential purposes; or

(2) any obligation a *firm* may owe to any other *person* under the general law; or

(3) any obligation imposed on a *firm* by article 26 of *MiFIR* or MiFID RTS 22.

Agent as client

2.4.3 R (1) If a *firm* (F) is aware that a *person* (C1) with or for whom it is providing services is acting as agent for another person (C2) in relation to those services, C1, and not C2, is the *client* of F in respect of that business.

(2) Paragraph (1) does not apply if:

(a) F has agreed with C1 in writing to treat C2 as its *client*; or

(b) C1 is neither a *firm* nor an *overseas financial services institution* and the main purpose of the arrangements between the parties is the avoidance of duties that F would otherwise owe to C2.

If this is the case, C2 is the *client* of F in respect of that business and C1 is not.

(3) If there is an agreement under (2)(a) in relation to more than one C2 represented by C1, F may discharge any requirement to notify, obtain consent from, or enter into an agreement with each C2 by sending to, or receiving from, C1 a single communication expressed to cover each C2, except that the following will be required for each C2:

(a) separate risk warnings required under this sourcebook;

(b) separate confirmations under the requirements on occasional reporting (■ COBS 16.2 or ■ COBS 16A.3); and

(c) separate *periodic statements.*

2

Reliance on other investment firms: MiFID and equivalent business

2.4.4 R

(1) This *rule* applies if a *firm* (F1), in the course of performing *MiFID or equivalent third country business*, receives an instruction to provide an *investment* or *ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:

(a) a *MiFID investment firm* or a *third country investment firm*; or

(b) an *investment firm* that is:

(i) a *firm* ; and

(ii) subject to equivalent relevant requirements.

(2) F1 may rely upon:

(a) any information about C transmitted to it by F2; and

(b) any recommendations in respect of the service or transaction that have been provided to C by F2.

(3) F2 will remain responsible for:

(a) the completeness and accuracy of any information about C transmitted by it to F1; and

(b) the suitability for C of any advice or recommendations provided to C.

(4) F1 will remain responsible for concluding the services or transaction based on any such information or recommendations in accordance with the applicable requirements under the *regulatory system*.

[**Note:** article 26 of *MiFID*]

2.4.5 G

(1) If F1 is required to perform a suitability assessment or an appropriateness assessment under ■ COBS 9A or ■ COBS 10A, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in ■ COBS 9A (excluding the *basic advice rules*) in performing that assessment.

(2) If F1 is required to perform an appropriateness assessment under ■ COBS 10A, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in ■ COBS 10A.2 in performing that assessment.

Reliance on other insurance distributors

2.4.5A R

Where a *firm* carrying on *insurance distribution activities* in relation to an *insurance-based investment product* is required to perform an appropriateness assessment under ■ COBS 10A, it may rely upon:

(1) a suitability assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing suitability in ■ COBS 9A; or

(2) an appropriateness assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing appropriateness in ■ COBS 10A.2,

in performing that assessment.

[**Note:** article 30(2) of the *IDD*]

Reliance on others: other situations

2.4.6 R

(1) This *rule* applies if the applicable *rule* on reliance on other *investment firms* or *insurance distributors* (■ COBS 2.4.4 R and ■ COBS 2.4.5AR) does not apply.

(2) A *firm* will be taken to be in compliance with any *rule* in this sourcebook that requires it to obtain information to the extent it can show it was reasonable for it to rely on information provided to it in writing by another *person*.

2.4.7 E

(1) In relying on ■ COBS 2.4.6 R, a *firm* should take reasonable steps to establish that the other *person* providing written information is not connected with the *firm* and is competent to provide the information.

(2) Compliance with (1) may be relied upon as tending to establish compliance with ■ COBS 2.4.6 R.

(3) Contravention of (1) may be relied upon as tending to establish contravention of ■ COBS 2.4.6 R.

2.4.8 G

It will generally be reasonable (in accordance with ■ COBS 2.4.6R (2)) for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information.

2.4.9 R

Any information that a *rule* in *COBS* or *CASS* requires to be sent to a *client* may be sent to another *person* on the instruction of the *client* so long as the recipient is not connected to the *firm*.

2.4.10 R

In the case of business that is not *MiFID or equivalent third country business*, if a *rule* in *COBS* or *CASS* requires information to be sent to a *client*, a *firm* need not send that information so long as it takes reasonable steps to establish that it has been or will be supplied by another *person*.

2

2.5 Optional additional products

Restriction on marketing or providing an optional product for which a fee is payable

2.5.1 R

(1) A *firm* must not enter into an agreement with a *client* under which a charge is, or may become, payable for an optional additional product unless the *client* has actively elected to obtain that specific product.

(2) A *firm* must not impose a charge on a *client* for an optional additional product under an agreement entered into on or after 1 April 2016 unless the *client* has actively elected to obtain that specific product before becoming bound to pay the charge.

(3) A *firm* must not invite or induce a *client* to obtain an optional additional product for which a charge will be, or may become, payable if the *firm* knows or has reasonable cause to suspect that:

(a) a contravention of (1) or (2) will take place with respect to the product; or

(b) the *person* supplying the optional additional product will act in a way that would contravene (1) or (2) if that *person* were a *firm*.

(4) An omission by a *client* is not to be regarded as an active election for the purposes of this *rule*.

(5) It is immaterial for the purposes of (3) whether or not the *firm* would or might be a party to the agreement for the optional additional product.

(6) A charge includes a financial consideration of any kind, whether payable to the *firm* or any other *person*.

(7) An optional additional product is a good, service or right of any description, whether or not financial in nature, that a *client* may obtain (or not, as the case may be) at his or her election in connection with, or alongside, a *designated investment*.

(8) If the *client* is required to obtain the additional product as a condition of the transaction related to the *designated investment*, then that product is an optional additional product if the *client* is given a choice:

(a) as to the seller or supplier of that product; or

(b) which specific product to obtain.

(9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the *firm* or another *person*.

(10) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the *client* actively elected before entering into the initial agreement or a preceding renewal to obtain the product.

(b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).

(c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.

(11) A *client* may make an active election for the purposes of this rule through an intermediary in the sales process and through a *person* acting on behalf of the *firm*.

2.5.2 G An example of an omission by a *client* which is not to be regarded as an active election is the failure by the *client* to change a default option such as a pre-ticked box on a website.

2.5.3 G *Firms* are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.

2.5.4 G *Firms* are reminded that they must ensure that their *appointed representatives* comply with this section ■ COBS 2.5.

Chapter 3

Client categorisation

3

3.1 Application

Scope

3.1.1 R The scope of this chapter is the same as that of the *rules* in the *Handbook* to which it relates.

3.1.2 G This chapter relates to parts of the *Handbook* whose application depends on whether a *person* is a *client*, a *retail client*, a *professional client* or an *eligible counterparty*. However, it does not apply to the extent that another part of the *Handbook* provides for a different approach to *client* categorisation. For example, a separate approach to *client* categorisation is set out in the definition of a *retail client* for a *firm* that gives *basic advice*.

3.1.2A R Subject to ■ COBS 3.1.3R and ■ COBS 3.6.4CR, in this chapter provisions marked "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

3.1.3 R The sections in this chapter on general notifications (■ COBS 3.3) and policies, procedures and records (■ COBS 3.8) do not apply in relation to a *firm* that is neither:

(1) conducting *designated investment business*; nor

(2) in the case of *MiFID or equivalent third country business* providing an *ancillary service* that does not constitute *designated investment business*.

Mixed business

3.1.4 R If a *firm* conducts business for a *client* involving both:

(1) MiFID or equivalent third country business; and

(2) other *regulated activities* subject to this chapter;

it must categorise that *client* for such business in accordance with the provisions in this chapter that apply to *MiFID or equivalent third country business*, including those provisions applied to the *equivalent business of a third country investment firm* as a result of ■ COBS 3.1.2AR.

3.1.5 G (1) For example, the requirement concerning mixed business will apply if a *MiFID investment firm* or *third country investment firm* advises a

client on whether to invest in a *scheme* or a *life policy*. This is because the former is within the scope of *MiFID* and the latter is not. In such a case, the *MiFID client* categorisation requirements prevail.

(2) The requirement does not apply where the *MiFID or equivalent third country business* is provided separately from the other *regulated activities*. Where this is the case, in accordance with *Principle* 7 (communications with clients) the basis on which the different activities will be performed, including any differences in the categorisations that apply, should be made clear to the *client*.

3

3.2 Clients

General definition

3.2.1 R

(1) A *person* to whom a *firm* provides, intends to provide or has provided:

(a) a service in the course of carrying on a *regulated activity*; or

(b) in the case of *MiFID or equivalent third country business*, an *ancillary service*,

is a "client" of that *firm*.

(2) A "client" includes a potential client.

(3) In relation to the *financial promotion rules*, a *person* to whom a *financial promotion* is or is likely to be *communicated* is a "client" of a *firm* that *communicates* or *approves* it.

(4) A client of an *appointed representative* or, if applicable, a *tied agent* is a "client" of the *firm* for whom that *appointed representative*, or *tied agent*, acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* or *MiFID* (see sections 39 and 39A of the *Act*).

[**Note:** article 4(1)(9) of *MiFID*]

3.2.2 G

(1) A *corporate finance contact* or a *venture capital contact* is not a *client* under the first limb of the general definition. This is because a *firm* does not provide a service to such a contact. However, it will be a *client* under the third limb of the general definition for the purposes of the *financial promotion rules* if the *firm communicates* or *approves* a *financial promotion* that is or is likely to be *communicated* to such a contact.

(2) *Communicating* or *approving* a *financial promotion* that is or is likely to be *communicated* to such a contact is not *MiFID or equivalent third country business*. In such circumstances, the "non-MiFID" *client* categorisations are relevant and, in categorising *elective professional clients*, the "quantitative test" will not need to be satisfied.

Who is the client?

3.2.3 R

(1) If a *firm* provides services to a *person* that is acting as an agent, the identity of its client will be determined in accordance with the *rule* on agents as clients (see ■ COBS 2.4.3 R).

(2) In relation to a *firm* establishing, operating or winding up a *personal pension scheme* or a *stakeholder pension scheme*, a member or beneficiary of that scheme is a *client* of the *firm*.

(3) If a *firm* that does not fall within (2) provides services to a *person* that is acting as the trustee of a trust, that *person* will be the *firm*'s *client* and the underlying beneficiaries of the trust will not.

(4) In relation to business that is neither *MiFID or equivalent third country business*, if a *firm* provides services to a fund that does not have separate legal personality, that fund will be the *firm's client*.

(5) If a *firm* provides services relating to a contribution to or interest in a *CTF* (except for a *personal recommendation* relating to a contribution to a *CTF* or in relation to the *communication* or *approval* of a *financial promotion*), the *firm's* only *client* is:

(a) the *registered contact*, if there is one;

(b) otherwise, the *person* to whom the statement must be sent in accordance with Regulation 10 of the *CTF Regulations*.

3

3.3 General notifications

3.3.1 R [deleted]

3.3.1A UK Articles 45(1) and (2) of the *MiFID Org Regulation* require *firms* to provide *clients* with specified information concerning *client* categorisation.

> 45(1)Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised as required by UK law on markets in financial instruments, of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with that Directive.
>
> (2)Investment firms shall inform clients in a durable medium about any right that client has to request a different categorisation and about any limitations to the level of client protection that a different categorisation would entail.

[**Note:** articles 45(1) and (2) of the *MiFID Org Regulation*]

3.3.1B R The information referred to in article 45(2) of the *MiFID Org Regulation* (as reproduced at COBS 3.3.1AUK) must be provided to *clients* prior to any provision of services.

[**Note:** paragraph 2 of section I of annex II to *MiFID*]

3.3.2 G This chapter requires a *firm* to allow a *client* to request re-categorisation as a *client* that benefits from a higher degree of protection (see COBS 3.7.1 R). A *firm* must therefore notify a *client* that is categorised as a *professional client* or an *eligible counterparty* of its right to request a different categorisation whether or not the *firm* will agree to such requests. However, a *firm* need only notify a *client* of a right to request a different categorisation involving a lower level of protection if it is prepared to consider such requests.

3.4 Retail clients

3.4.1 R A *retail client* is a *client* who is not a *professional client* or an *eligible counterparty*.

[**Note:** article 4(1)(11) of *MiFID*]

3.4.2 R If a *firm* provides services relating to a *CTF* (except for a *personal recommendation* relating to a contribution to a *CTF*), the *firm's client* is a *retail client* even if it would otherwise be categorised as a *professional client* or an *eligible counterparty* under this chapter.

3

3.5 Professional clients

3.5.1 R A *professional client* is a *client* that is either a *per se professional client* or an *elective professional client*.

[**Note:** article 4(1)(10) of *MiFID*]

Per se professional clients

3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

(1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised in the *UK* or a third country:

(a) a *credit institution*;

(b) an *investment firm*;

(c) any other authorised or regulated financial institution;

(d) an insurance company;

(e) a collective investment scheme or the management company of such a scheme;

(f) a pension fund or the management company of a pension fund;

(g) a commodity or commodity derivatives dealer;

(h) a local authority;

(i) any other institutional investor;

(2) in relation to *MiFID or equivalent third country business* a large undertaking meeting two of the following size requirements on a company basis:

(a) balance sheet total of EUR 20,000,000;

(b) net turnover of EUR 40,000,000;

(c) own funds of EUR 2,000,000;

(3) in relation to business that is not *MiFID or equivalent third country business* a large undertaking meeting anyof the following conditions:

(a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) (or

has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);

(b) an undertaking that meets (or any of whose *holding companies* or *subsidiaries* meets) two of the following tests:

(i) a balance sheet total of EUR 12,500,000;

(ii) a net turnover of EUR 25,000,000;

(iii) an average number of employees during the year of 250;

(c) a *partnership* or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited *partnership* without deducting loans owing to any of the *partners*;

(d) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and *designated investments* forming part of the trust's assets, but before deducting its liabilities;

(e) a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or *operator* of a *personal pension scheme* or *stakeholder pension scheme* where the scheme has (or has had at any time during the previous two years):

(i) at least 50 members; and

(ii) assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);

(4) a national or regional government, including a public body that manages public debt at national or regional level, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECB, the EIB) or another similar international organisation;

(5) another institutional investor whose main activity is to invest in *financial instruments* (in relation to the *firm's MiFID or equivalent third country business*) or *designated investments* (in relation to the *firm's* other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

[**Note:** first paragraph of section I of annex II to *MiFID*]

3.5.2A R [deleted]

3.5.2B R A *firm* must categorise a local public authority or municipality which (in either case) does not manage public debt as a *retail client*, unless it is permitted to treat such a *person* as an *elective professional client* in accordance with ■ COBS 3.5.3BR to ■ COBS 3.5.3ER.

3

3.5.2C G As a result of ■ COBS 3.5.2BR, a local public authority or municipality which (in either case) does not manage public debt should not be treated as a *per se professional client*.

Elective professional clients

3.5.3 R A *firm* may treat a *client* other than a local public authority or municipality as an *elective professional client* if it complies with (1) and (3) and, where applicable, (2):

(1) the *firm* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved (the "qualitative test");

(2) in relation to *MiFID or equivalent third country business* in the course of that assessment, at least two of the following criteria are satisfied:

(a) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;

(b) the size of the *client*'s *financial instrument* portfolio, defined as including cash deposits and *financial instruments*, exceeds EUR 500,000;

(c) the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged;

(the "quantitative test"); and

(3) the following procedure is followed:

(a) the *client* must state in writing to the *firm* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;

(b) the *firm* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and

(c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

[**Note:** first, second, third and fifth paragraphs of section II.1 and first paragraph of section II.2 of annex II to *MiFID*]

3.5.3A G (1) As a result of ■ COBS 3.5.3BR and ■ COBS 3.5.3ER a *firm* should always assess a local public authority or municipality against a "quantitative test" to treat it as an *elective professional client*, regardless of whether the *firm* intends to conduct business involving *MiFID or equivalent third country business* or other *regulated activities* subject to ■ COBS 3.

(2) The "quantitative test" that a *firm* should use depends on the application of ■ COBS 3.5.3BR (which applies for *UK clients*) and ■ COBS 3.5.3ER (which applies for non-*UK clients*).

3.5.3B R

(1) A *firm* may treat a *UK* local public authority or municipality as an *elective professional client* if it complies with ■ COBS 3.5.3R(1) and ■ COBS 3.5.3R(3) and, in addition, paragraph (2) of this *rule*.

(2) In the course of the assessment under ■ COBS 3.5.3R(1) the criterion in (a) below is satisfied as well as one of the criteria in (b) below (the "quantitative test"):

(a) the size of the *client's financial instrument* portfolio defined as including cash deposits and *financial instruments*, exceeds £10,000,000; and

(b) either:

(i) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of ten per quarter over the previous four quarters; or

(ii) the *person* authorised to carry out transactions on behalf of the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the provision of services envisaged; or

(iii) the *client* is an 'administering authority' of the Local Government Pension Scheme within the meaning of the version of Schedule 3 of The Local Government Pension Scheme Regulations 2013 or, (in relation to Scotland) within the meaning of the version of Schedule 3 of The Local Government Pension Scheme (Scotland) Regulations 2014 in force at 1 January 2018, and is acting in that capacity.

3.5.3C R

(1) This *rule* applies where a *firm* is subjecting a *UK* local public authority or municipality to the tests and is following the procedure required as a result of ■ COBS 3.5.3BR in respect of the *firm's* business carried on in relation to that *person's*:

(a) business in the course of or connected to its administration of a *pension scheme*; and

(b) other business as a local public authority or municipality.

(2) A *firm* must apply the qualitative and quantitative tests required as a result of ■ COBS 3.5.3BR separately and independently in relation to the *client's* business under (1)(a) and (1)(b).

(3) A *firm* must follow the procedure in ■ COBS 3.5.3R(3) required as a result of ■ COBS 3.5.3BR separately and independently in relation to the *client's* business under (1)(a) and (1)(b).

3.5.3D G

As a result of ■ COBS 3.5.2BR and ■ COBS 3.5.3CR, and depending on the outcome of the qualitative and quantitative tests required as a result of ■ COBS 3.5.3BR, a *firm* may be required to categorise a *UK* local public authority or municipality differently in relation to the two sorts of business described at ■ COBS 3.5.3CR(1)(a) and (b).

3

3.5.3E R

(1) A *firm* may treat a non-*UK* local public authority or municipality as an *elective professional client* if it complies with ■ COBS 3.5.3R(1) and ■ COBS 3.5.3R(3) and, in addition, applies the "quantitative test" that is applied in relation to *MiFID or equivalent third country business* under ■ COBS 3.5.3R(2).

(2) [deleted]

3.5.4 R

If the *client* is an entity, the qualitative test should be performed in relation to the *person* authorised to carry out transactions on its behalf.

[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.5 G

The fitness test applied to managers and directors of relevant *firms* is an example of the assessment of expertise and knowledge involved in the qualitative test.

[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.6 R

Before deciding to accept a request for re-categorisation as an *elective professional client* a *firm* must take all reasonable steps to ensure that the *client* requesting to be treated as an *elective professional client* satisfies the qualitative test and, where applicable, the relevant quantitative test.

[**Note:** second paragraph of section II.2 of annex II to *MiFID*]

3.5.7 G

An *elective professional client* should not be presumed to possess market knowledge and experience comparable to a *per se professional client*

[**Note:** second paragraph of section II.1 of annex II to *MiFID*]

3.5.8 G

Professional clients are responsible for keeping the *firm* informed about any change that could affect their current categorisation.

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID*]

3.5.9 R

(1) If a *firm* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as an *elective professional client* , the *firm* must take the appropriate action.

(2) Where the appropriate action involves re-categorising that client as a *retail client*, the *firm* must notify that *client* of its new categorisation.

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID*]

3.6 Eligible counterparties

3.6.1 R

(1) An *eligible counterparty* is a *client* that is either a *per se eligible counterparty* or an *elective eligible counterparty*.

(2) A *client* can only be an *eligible counterparty* in relation to *eligible counterparty business* (■ PRIN 1 Annex 1 R is an exception to this).

[**Note:** article 30(1) of *MiFID*]

Per se eligible counterparties

3.6.2 R

Each of the following is a *per se eligible counterparty* (including an entity that is not from the *UK* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

(1) an *investment firm*;

(2) a *credit institution*;

(3) an insurance company;

(4) a *collective investment scheme* authorised under the *UK* provisions which implemented the *UCITS Directive* or its management company;

(5) a pension fund or its management company;

(6) another financial institution authorised or regulated under the law of the *United Kingdom*;

(7) [deleted]

(8) a national government or its corresponding office, including a public body that deals with public debt at national level;

(9) a central bank; and

(10) a supranational organisation.

[**Note:** first paragraph of article 30(2) and first paragraph of article 30(4) of *MiFID*]

3.6.3 G

For the purpose of ■ COBS 3.6.2 R (6), a financial institution includes regulated institutions in the securities, banking and insurance sectors.

3

Elective eligible counterparties

3.6.4 R A *firm* may treat a *client* as an *elective eligible counterparty* in relation to business other than *MiFID or equivalent third country business* if:

(1) the *client* is an undertaking and:

(a) is a *per se professional client* (except for a *client* that is only a *per se professional client* because it is an institutional investor under ■ COBS 3.5.2 R (5)) and:

(i) is a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time); or

(ii) meets the criteria in the *rule* on meeting two quantitative tests (■ COBS 3.5.2 R (3)(b)); and

(b) requests such categorisation; and

(2) the *firm* adheres to the procedure set out at ■ COBS 3.6.4BUK.

3.6.4A EU Provided that it adheres to the procedure set out at ■ COBS 3.6.4BUK, a *firm* may treat a *client* as an *elective eligible counterparty* in relation to *MiFID or equivalent third country business* if the *client*:

(1) is an undertaking;

(2) is a *per se professional client*, except for a *client* that is only a *per se professional client* because it is an institutional investor under ■ COBS 3.5.2R(5); and

(3) requests such categorisation.

[**Note**: first paragraph of article 30(3) of *MiFID*]

3.6.4B UK Article 71(5) of the *MiFID Org Regulation* sets out the procedure to be followed where a *client* requests to be treated as an *eligible counterparty*.

> 71(5)Where a client requests to be treated as an eligible counterparty, in accordance with [■ COBS 3.6.4AR], the following procedure shall be followed:
>
> (a)the investment firm shall provide the client with a clear written warning of the consequences for the client of such a request, including the protections they may lose;
>
> (b)the client shall confirm in writing the request to be treated as an eligible counterparty either generally or in respect of one or more investment services or a transaction or type of transaction or product and that they are aware of the consequences of the protection they may have lost as a result of the request.

3.6.4C R [deleted]

3.6.5 G The categories of *elective eligible counterparties* include an equivalent undertaking that is not from an the *United Kingdom* provided the above conditions and requirements are satisfied.

3.6.6 R A *firm* may obtain a prospective counterparty's confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.

[**Note:** second paragraph of article 30(3) of *MiFID*]

Client and firm located in different jurisdictions

3.6.7 R [deleted]

3

3.7 Providing clients with a higher level of protection

3.7.1 R A *firm* must allow a *professional client* or an *eligible counterparty* to request re-categorisation as a *client* that benefits from a higher degree of protection.

[**Note:** second paragraph of article 30(2) of, and the second paragraph of section I of annex II to, *MiFID*]

3.7.2 G It is the responsibility of a *professional client* or *eligible counterparty* to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

[**Note:** third paragraph of section I and fourth paragraph of section II.2 of annex II to *MiFID*]

3.7.3 R [deleted]

3.7.3A UK Article 45(3) of the *MiFID Org Regulation* sets out provisions in respect of giving *clients* a higher level of protection.

> 45(3)Investment firms may, either on their own initiative or at the request of the client concerned treat a client in the following manner:
>
> (a)as a professional or retail client where that client might otherwise be classified as an eligible counterparty pursuant to [■ COBS 3.6.2R];
>
> (b)a retail client where that client that is considered a professional client pursuant to Part 2 of Schedule 1 to Regulation (EU) No 600/2014.

3.7.3B UK Article 71(2) to (4) of the *MiFID Org Regulation* sets out provisions applying to *eligible counterparties* requesting a higher level of protection.

> 71(2)Where, pursuant to [■ COBS 3.7.1R], an eligible counterparty requests treatment as a client whose business with an investment firm is subject to rules in the Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which were relied on immediately before IP completion day to implement Articles 24, 25, 27 and 28 of Directive 2014/65/EU ("the relevant rules"), the request should be made in writing, and shall indicate

whether the treatment as retail client or professional client refers to one or more investment services or transactions, or one or more types of transaction or product.

(3) Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to the relevant rules, but does not expressly request treatment as a retail client, the firm shall treat that eligible counterparty as a professional client.

(4) Where the eligible counterparty expressly requests treatment as a retail client, the investment firm shall treat the eligible counterparty as a retail client, applying the provisions in respect of requests of non-professional treatment specified in paragraph 4 of Schedule 1 to Regulation (EU) No 600/2014.

3.7.4 R [deleted]

3.7.5 R

(1) If, in relation to *MiFID or equivalent third country business* a *per se professional client* requests treatment as a *retail client*, the *client* will be classified as a *retail client* if it enters into a written agreement with the *firm* to the effect that it will not be treated as a *professional client* or *eligible counterparty* for the purposes of the applicable conduct of business regime.

(2) This agreement must specify the scope of the re-categorisation, such as whether it applies to one or more particular services or transactions, to one or more types of product or transaction or to one or more *rules*.

[**Note:** fourth paragraph of section I of annex II to *MiFID*]

3.7.6 G

(1) In accordance with *Principle* 7 (communications with *clients*) if a *firm* at its own initiative re-categorises a *client* in accordance with this section, it should notify that *client* of its new category under this section.

(2) If the *firm* already has an agreement with the *client*, it should also consider any contractual requirements concerning the amendment of that agreement.

3.7.7 G The ways in which a *client* may be provided with additional protections under this section include re-categorisation:

(1) on a general basis; or

(2) on a trade by trade basis; or

(3) in respect of one or more specified *rules*; or

(4) in respect of one or more particular services or transactions; or

(5) in respect of one or more types of product or transaction.

[**Note:** second paragraph of article 30(2) of *MiFID*]

3.7.8 G Re-categorising a *client* as a *retail client* under this section does not necessarily mean it will become an *eligible complainant* under *DISP*.

3.8 Policies, procedures and records

Policies and procedures

3.8.1 R A *firm* must implement appropriate written internal policies and procedures to categorise its *clients*.

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID*]

Records

3.8.2 R

(1) A *firm* must make a record of the form of each notice provided and each agreement entered into under this chapter. This record must be made at the time that standard form is first used and retained for the relevant period after the *firm* ceases to carry on business with *clients* who were provided with that form.

(2) A *firm* must make a record in relation to each *client* of:

(a) the categorisation established for the *client* under this chapter, including sufficient information to support that categorisation;

(b) evidence of despatch to the *client* of any notice required under this chapter and if such notice differs from the relevant standard form, a copy of the actual notice provided; and

(c) a copy of any agreement entered into with the *client* under this chapter.

This record must be made at the time of categorisation and should be retained for the relevant period after the *firm* ceases to carry on business with or for that *client*.

(3) The relevant periods are:

(a) indefinitely, in relation to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*;

(b) at least five years, in relation to a *life policy* or *pension contract*;

(c) five years in relation to *MiFID or equivalent third country business*; and

(d) three years in any other case.

[**Note:** article 16(6) of *MiFID*]

3.8.3 G If a *firm* provides the same form of notice to more than one *client*, it need not maintain a separate copy of it for each *client*, provided it keeps evidence of despatch of the notice to each *client*.

Chapter 4

Communicating with clients, including financial promotions

4.1 Application

Who? What?

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

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*.

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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*]

Where? General position

4.1.8 R

(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).

4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

4.2.1 R

(1) A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.

(2) This *rule* applies in relation to:

(a) a communication by the *firm* to a *customer* in relation to *designated investment business* which is not *MiFID, equivalent third country or optional exemption business*, other than a *third party prospectus*;

(aa) a communication to an *eligible counterparty* that is in relation to:

(i) *MiFID or equivalent third country business* other than a *third party prospectus*; or

(ii) *insurance distribution*;

(ab) a communication by the *firm* to a *customer* in relation to *MiFID, equivalent third country or optional exemption business*, other than a *third party prospectus*;

(b) a *financial promotion communicated* by the *firm* that is not:

(i) an *excluded communication*;

(ii) a *non-retail communication*;

(iii) a *third party prospectus*; and

(c) a *financial promotion* approved by the *firm*.

(3) As part of complying with (1), a *firm* must take into account the nature of the *client*.

[**Note:** ,article 24(3) and article 30(1) of *MiFID*, article 17(2) of the *IDD* and article 77 of the *UCITS Directive*]

4.2.2 G

(1) The *fair, clear and not misleading rule* applies in a way that is appropriate and proportionate taking into account the means of communication, the information the communication is intended to convey and the nature of the *client* and of its business, if any. So a communication addressed to a *professional client* or an *eligible counterparty* may not need to include the same information, or be presented in the same way, as a communication addressed to a *retail client*.

(2) ■ COBS 4.2.1R(2)(b) does not limit the application of the *fair, clear and not misleading rule* under ■ COBS 4.2.1R (2) (a). So, for example, a communication in relation to *designated investment business* that is both a communication to a *professional client* and a *financial promotion*, will still be subject to the *fair, clear and not misleading rule*.

[**Note:** article 30(1) of *MiFID* and recital 65 to the *MiFID Org Regulation*, article 17(2) of the *IDD*]

4.2.3 G Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 creates criminal offences relating to certain misleading statements and practices.

Fair, clear and not misleading financial promotions

4.2.4 G A *firm* should ensure that a *financial promotion*:

(1) for a product or service that places a *client's* capital at risk makes this clear;

(2) that quotes a yield figure gives a balanced impression of both the short and long term prospects for the *investment*;

(3) that promotes an *investment* or service whose charging structure is complex, or in relation to which the *firm* will receive more than one element of remuneration, includes the information necessary to ensure that it is fair, clear and not misleading and contains sufficient information taking into account the needs of the recipients;

(4) that names the *FCA*, *PRA* or both as its regulator and refers to matters not regulated by either the *FCA*, *PRA* or both makes clear that those matters are not regulated by the *FCA*, *PRA* or either;

(5) that offers *packaged products* or *stakeholder products* not produced by the *firm*, gives a fair, clear and not misleading impression of the producer of the product or the manager of the underlying investments.

4.2.5 G A communication or a *financial promotion* should not describe a feature of a product or service as "guaranteed", "protected" or "secure", or use a similar term unless:

(1) that term is capable of being a fair, clear and not misleading description of it; and

(2) the *firm* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

The reasonable steps defence to an action for damages

4.2.6 R 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*.

4.3 Financial promotions to be identifiable as such

4.3.1 R

(1) A *firm* must ensure that a *financial promotion* addressed to a *client* is clearly identifiable as such.

[**Note**: article 24(3) of *MiFID*, article 17(2) of the *IDD* and article 77 of the *UCITS Directive*]

(2) If a *financial promotion* relates to a *firm's MiFID, equivalent third country or optional exemption business*, this *rule* does not apply to the extent that the *financial promotion* is a *third party prospectus*.

(3) If a *financial promotion* relates to a *firm's* business that is not *MiFID or equivalent third country business*, this *rule* applies to *communicating* or *approving* the *financial promotion* but does not apply:

(a) to the extent that it is an *excluded communication*;

(b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;

(c) if it is *image advertising*;

(d) if it is a *non-retail communication*;

(e) [deleted]

(4) In the case of a marketing communication that relates to:

(a) a *UCITS scheme*, or

(b) insurance distribution,

(2) and (3) do not limit the application of this *rule*.

4.4 Compensation information

4.4.1 R A *firm* must ensure that any reference in advertising to an investor compensation scheme is limited to a factual reference to the scheme.

[**Note:** article 10(3) of the *Investor Compensation Directive*]

4.4.2 G [deleted]

4.4.3 R To ensure that a *firm* pays due regard to the information needs of its *clients*, and communicates information to them in a way which is clear, fair and not misleading with respect to the activity of *issuing electronic money*, a *firm* must ensure that, in good time before the *firm* issues *electronic money* to a *person*, it has been communicated to that *person* on paper or in another *durable medium* that the *compensation scheme* does not cover claims made in connection with *issuing electronic money*.

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4.5 Communicating with retail clients (non-MiFID provisions)

Application

4.5.1 R

(1) Subject to (2) and (3), this section applies to a *firm* in relation to:

(a) the provision of information in relation to its *designated investment business*; and

(b) the *communication* or *approval* of a *financial promotion*;

where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

(2) This section does not apply to a *firm* communicating in relation to its *MiFID, equivalent third country or optional exemption business*.

(3) This section does not apply in relation to a communication:

(a) to the extent that it is an *excluded communication*;

(b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;

(c) if it is *image advertising*.

General rule

4.5.2 R

A *firm* must ensure that information:

(1) includes the name of the *firm*;

(2) is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of *relevant business* or a *relevant investment*;

(3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;

(4) does not disguise, diminish or obscure important items, statements or warnings.

(5) uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout that ensures that such indication is prominent;

(6) is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each *client*, unless the *client* has agreed to receive information in more than one language; and

(7) is up-to-date and relevant to the means of communication used.

4.5.3 G The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *retail client* can identify the *firm* communicating the information.

4.5.4 G In deciding whether, and how, to communicate information to a particular target audience, a *firm* should take into account the nature of the product or business, the risks involved, the *client's* commitment, the likely information needs of the average recipient, and the role of the information in the sales process.

4.5.5 G When communicating information, a *firm* should consider whether omission of any relevant fact will result in the information being insufficient, unclear, unfair or misleading. When considering whether a fact should be included in the communication or omitted from it, a *firm* should bear in the mind the *guidance* in ■ COBS 4.2.2G to provide information which is appropriate and proportionate.

Comparative information

4.5.6 R If information compares *relevant business*, *relevant investments*, or persons who carry on *relevant business*, a *firm* must ensure that the comparison is meaningful and presented in a fair and balanced way

Referring to tax

4.5.7 R

(1) If any information refers to a particular tax treatment, a *firm* must ensure that it prominently states that the tax treatment depends on the individual circumstances of each *client* and may be subject to change in future.

(2) This *rule* applies in relation to a *financial promotion* except to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

Consistent financial promotions

4.5.8 R

(1) A *firm* must ensure that information contained in a *financial promotion* is consistent with any information the *firm* provides to a *retail client* in the course of carrying on *designated investment business*.

(2) This *rule* does not apply to a *financial promotion* to the extent that it relates a *pure protection contract* that is a *long-term care insurance contract*.

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Innovative finance ISA

4.5.9 G Examples of information about relevant risks (■ COBS 4.5.2R) that a *firm* should give a *retail client* in relation to an *innovative finance ISA* include:

(1) an explanation of the tax consequences if:

(a) the *innovative finance component* is a *P2P agreement* that is not repaid; and

(b) an *operator of an electronic system in relation to lending* which facilitates a *P2P agreement* fails;

(2) the procedure for, timing and tax consequences of:

(a) withdrawing a *P2P agreement* from the *innovative finance ISA*; and

(b) a request for transfer of all or part of the *innovative finance components* in the *innovative finance ISA*; and

(3) a warning, as relevant, that it may, or will, not be possible to sell or trade *P2P agreements* at market value on a secondary market.

4.5.10 G *Operators of electronic systems in relation to lending* and *firms* which *advise on P2P agreements* should also have regard to the *guidance* in ■ COBS 14.3.7AG and ■ COBS 14.3.7BG regarding the types of information they should provide to *clients* to explain the specific nature and risks of *P2P agreements*.

Lifetime ISA

4.5.11 G Information about relevant risks (■ COBS 4.5.2R) that a *firm* should give a *retail client* in relation to a *lifetime ISA* may include:

(1) an explanation of:

a *retail client's* eligibility to subscribe to a *lifetime ISA* (including annual subscription limits) and to claim the *lifetime ISA government bonus*;

(b) the *lifetime ISA government withdrawal charge* and the circumstances in which it might arise; and

(c) the process by which a *retail client* can transfer a *lifetime ISA*; and

(2) warnings that, if the *retail client*:

(a) incurs a *lifetime ISA government withdrawal charge*, the *retail client* may get back less than they paid in to a *lifetime ISA*;

(b) saves in a *lifetime ISA* instead of enrolling in, or contributing to a *qualifying scheme*, *occupational pension scheme*, or *personal pension scheme*:

(i) the *retail client* may lose the benefit of contributions by an employer (if any) to that scheme; and

(ii) the *retail client's* current and future entitlement to means tested benefits (if any) may be affected.

Authorised fund managers' communications in relation to benchmarks

4.5.11A R The *rules* in ■ COBS 4.5.12R to ■ COBS 4.5.15R apply to:

(1) a *financial promotion* relating to an *authorised fund*;

(2) a communication which contains a statement referring to or concerning the past performance of an *authorised fund*; and

(3) any other communication about an *authorised fund* that refers in any way to the aims of the *fund* or describes the benefits or risks of investing in it.

4.5.11B G As a result of ■ COBS 4.5.11AR, ■ COBS 4.5.12R to ■ COBS 4.5.15R would not normally be expected to apply to administrative communications if those communications do not refer in any way to the aims of an *authorised fund* or describe the benefits or risks of investing in it. Examples of such communications might include contract notes that simply set out details of the *unitholder's* purchase or *redemption* of *units*, statements of income distributions or accumulations, and confirmations of a change of *unitholder* registration details.

4.5.12 R Subject to ■ COBS 4.5.13R, an *authorised fund manager* must include in any communication about an *authorised fund* to which this *rule* applies:

(1) a short explanation, in terms consistent with the relevant *prospectus*, of the choice and use of every *target benchmark*, *constraining benchmark* or *comparator benchmark* used in relation to the *scheme*; or

(2) where no *target benchmark*, *constraining benchmark* or *comparator benchmark* is referred to in the *prospectus*, a statement to that effect and a short explanation of how investors can assess the performance of the *scheme*.

4.5.13 R Where an *authorised fund manager* includes, in any communication about an *authorised fund* to which this *rule* applies, an indication of past performance for any *authorised fund* it manages, it must (in addition to complying with ■ COBS 4.6.2R where applicable):

(1) include the corresponding past performance record of any *target benchmark* or *constraining benchmark* referred to in the *prospectus* of the *scheme*; and

(2) not include an indication of past performance for any index, indices or similar factor that is not referred to in the *prospectus* of the *scheme*.

4.5.14 R (1) Subject to paragraph (2), if a communication to which ■ COBS 4.5.13R applies includes information comparing past performance of the *scheme* against one or more *comparator benchmarks*, the *authorised fund manager* must, for the period specified in paragraph (3) and in

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every subsequent communication it makes that is also subject to ■ COBS 4.5.13R:

(a) include a comparison against the same *comparator benchmark* or *comparator benchmarks*; and

(b) not include a comparison against any other benchmark.

(2) Paragraph (1) does not apply if such a comparison would not be compliant with ■ COBS 4.5.13R as a result of a change to the *prospectus* of the *scheme*.

(3) The period specified for the purposes of paragraph (1) is:

(a) twelve *months* after a one-off communication is made; or

(b) for as long as the communication remains available to the public in a *durable medium* and has not been superseded by a revised version.

4.5.15 R ■ COBS 4.5.12R to ■ COBS 4.5.14R do not apply in respect of any reference to a *comparator benchmark* that is not identified in the *prospectus* of the relevant *scheme* when that reference appears in a communication that is:

(1) used exclusively in the course of a personal visit, telephone conversation or other interactive dialogue; or

(2) in response to a specific unsolicited request by a *client* for past performance to be compared with a particular *comparator benchmark*.

Funds investing in inherently illiquid assets (FIIAs)

4.5.16 R (1) This *rule* applies to any *financial promotion* relating to a *FIIA* except the *FIIA's prospectus*.

(2) A *firm* must ensure that the following risk warning is given:

"[Name of fund] invests in assets that may at times be hard to sell. This means that there may be occasions when you experience a delay or receive less than you might otherwise expect when selling your investment. For more information on risks, see the prospectus and key investor information document."

(3) If the *financial promotion* is a *non-real time financial promotion*, a *firm* must ensure that the risk warning is prominently placed in the *financial promotion* in a font size that is at least equal to the predominant font size used throughout the communication.

4.5.17 G The *rules* in ■ COBS 4.5 do not apply to the form or content of a *NURS-KII document* (see ■ COBS 4.1.7AR (Modification relating to the KII Regulation)).

4.5A Communicating with clients (including past, simulated past and future performance) (MiFID provisions)

Application

4.5A.1 R

(1) This section applies to a *firm* in relation to:

(a) the provision of information; or

(b) the *communication* of a *financial promotion*,

which relates to the *firm's MiFID, equivalent third country or optional exemption business*.

(2) This section does not apply to a communication:

(a) to the extent that it is a *third party prospectus*; or

(b) if it is *image advertising*.

[**Note:** article 24(3) of *MiFID*]

4.5A.2 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).

4.5A.2A 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*.

General requirements

4.5A.3 UK

44(1) Investment firms shall ensure that all information they address to, or disseminate in such a way that it is likely to be received by, retail or professional clients or potential retail or professional clients, including marketing communications, satisfies the conditions laid down in paragraphs 2 to 8.

44(2) Investment firm shall ensure that the information referred to in paragraph 1 complies with the following conditions:

(a) the information includes the name of the investment firm,

(b) the information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument,

(c) the information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout ensuring such indication is prominent,

(d) the information is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received,

(e) the information does not disguise, diminish or obscure important items, statements or warnings,

(f) the information is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each client, unless the client has accepted to receive information in more than one language,

(g) the information is up-to-date and relevant to the means of communication used.

[**Note:** article 44(1) and (2) of the *MiFID Org Regulation*]

4.5A.4 G The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *client* can identify the *firm* communicating the information.

4.5A.5 G In deciding whether, and how, to communicate information to a particular target audience, a *firm* should take into account the nature of the product or business, the risks involved, the *client's* commitment, the likely information needs of the average recipient, and the role of the information in the sales process.

4.5A.6 G When communicating information, a *firm* should consider whether omission of any relevant fact will result in the information being insufficient, unclear, unfair or misleading.

Comparative information

4.5A.7 UK 44(3) Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, investment firms shall ensure that the following conditions are satisfied:

(a) the comparison is meaningful and presented in a fair and balanced way;

(b) the sources of the information used for the comparison are specified;

(c) the key facts and assumptions used to make the comparison are included.

[**Note:** article 44(3) of the *MiFID Org Regulation*]

Referring to tax

4.5A.8 UK

44(7) Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

[**Note:** article 44(7) of the *MiFID Org Regulation*]

Consistent financial promotions

4.5A.9 UK

46(5) Investment firms shall ensure that information contained in a marketing communication is consistent with any information the firm provides to clients in the course of carrying on investment and ancillary services.

[**Note:** article 46(5) of the *MiFID Org Regulation*]

Past performance

4.5A.10 UK

44(4) Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, investment firms shall ensure that the following conditions are satisfied:

(a) that indication is not the most prominent feature of the communication;

(b) the information must include appropriate performance information which covers the preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided where less than five years, or such longer period as the firm may decide, and in every case that performance information is based on complete 12-month periods;

(c) the reference period and the source of information is clearly stated;

(d) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

(e) where the indication relies on figures denominated in a currency other pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

(f) where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed.

[**Note:** article 44(4) of the *MiFID Org Regulation*]

4.5A.11 G

The obligations relating to describing performance should be interpreted in the light of their purpose and in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey. For example, a *periodic statement* in relation to *managing investments* that is sent in accordance with the *rules* on

reporting information to *clients* (see ■ COBS 16 and ■ COBS 16A) may include past performance as its most prominent feature.

[**Note:** recital 65 to the *MiFID Org Regulation*]

Simulated past performance

4.5A.12 UK

44(5) Where the information includes or refers to simulated past performance, investment firms shall ensure that the information relates to a financial instrument or a financial index, and the following conditions are satisfied:

44(5)(a) the simulated past performance is based on the actual past performance of one or more financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the financial instrument concerned;

44(5)(b) in respect of the actual past performance referred to in point (a), the conditions set out in points (a) to (c), (e) and (f) of paragraph 4 are satisfied;

44(5)(c) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

[**Note:** article 44(5) of the *MiFID Org Regulation*]

4.5A.13 G

For the purposes of ■ COBS 4.5A.12UK, the conditions referred to in article 44(5)(b) can be found reproduced in ■ COBS 4.5A.10UK.

Future performance

4.5A.14 UK

44(6) Where the information contains information on future performance, investment firms shall ensure that the following conditions are satisfied:

(a) the information is not based on or refer to simulated past performance;

(b) the information is based on reasonable assumptions supported by objective data;

(c) where the information is based on gross performance, the effect of commissions, fees or other charges is disclosed;

(d) the information is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specific types of instruments included in the analysis;

(e) the information contains a prominent warning that such forecasts are not a reliable indicator of future performance.

[**Note:** article 44(6) of the *MiFID Org Regulation*]

4.5A.15 G A *firm* should not provide information on future performance if it is not able to obtain the objective data needed to comply with the requirements regarding information on future performance in ■ COBS 4.5A.14UK. For example, objective data in relation to *EIS shares* may be difficult to obtain.

Information that uses the name of any competent authority

4.5A.16 UK 44(8) The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the investment firm.

[**Note:** article 44(8) of the *MiFID Org Regulation*]

Funds investing in inherently illiquid assets (FIIAs)

4.5A.17 R

(1) This *rule* applies to any *financial promotion* relating to a *FIIA* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*, except the *FIIA's prospectus*.

(2) A *firm* must ensure that the following risk warning is given:

> "[Name of fund] invests in assets that may at times be hard to sell. This means that there may be occasions when you experience a delay or receive less than you might otherwise expect when selling your investment. For more information on risks, see the prospectus and key investor information document."

(3) If the *financial promotion* is a *non-real time financial promotion*, the risk warning must be prominently placed in the *financial promotion* in a font size that is at least equal to the predominant font size used throughout the communication.

4.5A.18 G The *rules* in ■ COBS 4.5A do not apply to the form or content of a *NURS-KII document* (see ■ COBS 4.1.7AR (Modification relating to the KII Regulation)).

4.6 Past, simulated past and future performance (non-MiFID provisions)

Application

4.6.1 R

(1) Subject to (2) and (3), this section applies to a *firm* in relation to:

(a) [deleted]

(b) the *communication* or *approval* of a *financial promotion*,

where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

(2) This section does not apply to a *firm* communicating in relation to its *MiFID, equivalent third country or optional exemption business*

(3) This section does not apply in relation to a communication:

(a) to the extent that it is an *excluded communication*;

(b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;

(c) if it is *image advertising*;

(d) to the extent that it relates to a *deposit* that is not a *structured deposit* (see also ■ COBS 4.1.1R(3));

(e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

Past performance

4.6.2 R

A *firm* must ensure that information that contains an indication of past performance of *relevant business*, a *relevant investment* or a financial index, satisfies the following conditions:

(1) that indication is not the most prominent feature of the communication;

(2) the information includes appropriate performance information which covers the preceding five years, or the whole period for which the investment has been offered, the financial index has been established, or the service has been provided (where less than five years, or such longer period as the *firm* may decide), and in every case that performance information must be based on complete 12-month periods;

(3) the reference period and the source of information are clearly stated;

(4) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

(5) if the indication relies on figures denominated in a currency other than pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

(6) if the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed.

4.6.3 G The obligations relating to describing performance should be interpreted in the light of their purpose and in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey. For example, a periodic statement in relation to *managing investments* that is sent in accordance with the *rules* on reporting information to *clients* (see ■ COBS 16) may include past performance as its most prominent feature.

4.6.4 G If a *financial promotion* includes information referring to the past performance of a *packaged product* that is not a *financial instrument*, a *firm* will comply with the *rule* on appropriate performance information (■ COBS 4.6.2R (2)) if the *financial promotion* includes, in the case of a *scheme*, unit-linked *life policy*, unit-linked *personal pension scheme* or unit-linked *stakeholder pension scheme* (other than a unitised with-profits *life policy* or *stakeholder pension scheme*) past performance information calculated and presented in accordance with the table in ■ COBS 4.6.4A G.

4.6.4A G This Table belongs to ■ COBS 4.6.4 G

Percentage growth					
[Fund name]	Quarter/ Year - Quarter/ Year	Quarter/ Year - Quarter/ Year	Quarter/ Year - Quarter/ Year	Quarter/ Year - Quarter/ Year	Quarter/ Year - Quarter/ Year
	pgr%	pgr%	pgr%	pgr%	pgr%

Notes:
1. The table should show performance information for five (or if performance information for fewer than five is available, all) complete 12-month periods, the most recent of which ends with the last full quarter preceding the date on which the *firm* first *communicates* or *approves* the *financial promotion*.
2. For products with performance data for fewer than five 12-month periods, *firms* should clearly indicate that performance data does not exist for the relevant periods.
3. No allowance should be made for tax recoveries on income for *pension contracts*, *ISAs* or *PEPs*.
4. pgr is the percentage growth rate for the year, where: pgr = ((P1 - P0)/PO)*100 and rounded to the nearest 0.1%, with exact 0.05% rounded to the nearest even 0.1%; and where P0 is the price at the start of the 12-month period and P1 is the price on the same day in the following 12-month period.
5. The prices should allow for any net distributions to be reinvested.

6. The price at P1 must be adjusted for any charges since the date of P0 which are based on a proportion of the fund and are levied by the cancellation of units.
7. The *firm* should use single pricing, or (if this is not available) bid to bid prices, unless the *firm* has reasonable grounds to be satisfied that another basis would better reflect the past performance of the fund.

4.6.4B G

(1) The *firm* should present the information referred to in ■ COBS 4.6.4 G no less prominently than any other past performance information.

(2) This *guidance* does not apply to a *prospectus*, *key investor information document* or *NURS-KII document* drawn up in accordance with *COLL*.

4.6.5 G

(1) In relation to a *packaged product* (other than a *scheme*, a unit-linked *life policy*, unit-linked *personal pension scheme* or a unit-linked *stakeholder pension scheme* (that is not a unitised with-profits *life policy* or *stakeholder pension scheme*)), the information should be given on:

(a) an offer to bid basis (which should be stated) if there is an actual return or comparison of performance with other *investments*; or

(b) an offer to offer, bid to bid or offer to bid basis (which should be stated) if there is a comparison of performance with an index or with movements in the price of *units*; or

(c) a single pricing basis with allowance for charges.

(2) If the pricing policy of the *investment* has changed, the prices used should include such adjustments as are necessary to remove any distortions resulting from the pricing method.

Simulated past performance

4.6.6 R

A *firm* must ensure that information that contains an indication of simulated past performance of *relevant business*, a *relevant investment* or a financial index, satisfies the following conditions:

(1) it relates to an investment or a financial index;

(2) the simulated past performance is based on the actual past performance of one or more investments or financial indices which are the same as, substantially the same as, or underlie, the investment concerned;

(3) in respect of the actual past performance referred to in (2), the conditions set out in paragraphs (1) to (3), (5) and (6) of the *rule* on past performance (■ COBS 4.6.2 R) are complied with; and

(4) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

Future performance

4.6.7 R

(1) A *firm* must ensure that information that contains an indication of future performance of *relevant business*, a *relevant investment*, a *structured deposit* or a financial index, satisfies the following conditions:

(a) it is not based on and does not refer to simulated past performance;

(b) it is based on reasonable assumptions supported by objective data;

(c) where the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed;

(ca) it is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specified types of investments included in the analysis; and

(d) it contains a prominent warning that such forecasts are not a reliable indicator of future performance.

(2) This *rule* only applies in relation to *financial promotions* that relate to a *financial instrument* (or a financial index that relates exclusively to *financial instruments*) or a *structured deposit*.

4.6.8 G

A *firm* should not provide information on future performance if it is not able to obtain the objective data needed to comply with the *rule* on future performance. For example, objective data in relation to *EIS shares* may be difficult to obtain.

4.6.9 R

(1) A *firm* that communicates to a *client* a *projection* for a *packaged product* which is not a *financial instrument* must ensure that the *projection* complies with the *projections rules* in COBS 13.4, COBS 13.5 and COBS 13 Annex 2.

(2) A *firm* must not communicate a *projection* for a highly volatile product to a *client* unless the product is a *financial instrument*.

4.7 Direct offer financial promotions

Application

4.7.-2 R 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 G (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]

4

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) ■ BCOBS 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 ■ BCOBS 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 *PRIIPs 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-PRIIP 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.

4.7.7 R

(1) Unless permitted by ■ COBS 4.7.8 R, a *firm* must not *communicate* or *approve* a *direct-offer financial promotion* relating to a *non-readily realisable security* a *P2P agreement* or a *P2P portfolio* to or for *communication* to a *retail client* without the conditions in (2) and (3) being satisfied.

(2) The first condition is that the *retail client* recipient of the *direct-offer financial promotion* is one of the following:

(a) certified as a 'high net worth investor' in accordance with ■ COBS 4.7.9 R;

(b) certified as a 'sophisticated investor' in accordance with ■ COBS 4.7.9 R;

(c) self-certified as a 'sophisticated investor' in accordance with ■ COBS 4.7.9 R; or

(d) certified as a 'restricted investor' in accordance with ■ COBS 4.7.10 R.

(3) The second condition is that the *firm* itself or:

(a) the *person* who will *arrange* or *deal* in relation to the *non-readily realisable security*; or

(b) the *person* who will facilitate the *retail client* becoming a *lender* under a *P2P agreement* or a *P2P portfolio*,

will comply with the *rules* on appropriateness (see ■ COBS 10 and ■ COBS 10A) or equivalent requirements for any application or order that the *firm* or *person* is aware, or ought reasonably to be aware, is in response to the *direct offer financial promotion*.

4.7.8 R A *firm* may *communicate* or *approve* a *direct-offer financial promotion* relating to a *non-readily realisable security*, a *P2P agreement* or a *P2P portfolio* 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*.

4.7.9 R (1) A certified high net worth investor, a certified sophisticated investor or a self-certified sophisticated investor is an individual who has signed, within the period of twelve months ending with 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):

(a) certified high net worth investor: ■ COBS 4.12.6 R;

(b) certified sophisticated investor: ■ COBS 4.12.7 R;

(c) self-certified sophisticated investor: ■ COBS 4.12.8 R.

(2) Each of the statements in (1), when used in relation to *non-readily realisable securities*, *P2P agreements* or a *P2P portfolio*, must, as appropriate, be modified as follows:

(a) in all of the statements, any references to "non-mainstream pooled investments" must be replaced with references to "non-readily realisable securities" or "P2P agreements or P2P portfolios", as applicable;

(b) in the statement in ■ COBS 4.12.8R, the reference to "unlisted company" must be replaced with a reference to "P2P agreement or P2P portfolio"; and

(b) in the statement in ■ COBS 4.12.8R, the reference to "private equity sector, or in the provision of finance for small and medium

enterprises" must be replaced with a reference to "provision of finance, resulting in an understanding of the P2P agreements or P2P portfolios to which the promotions will relate."

4.7.10 R A certified restricted investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms, substituting "P2P agreements or P2P portfolios" for "non-readily realisable securities", as appropriate:

"RESTRICTED INVESTOR STATEMENT

I make this statement so that I can receive promotional communications relating to non-readily realisable securities as a restricted investor. I declare that I qualify as a restricted investor because:

(a) in the twelve months preceding the date below, I have not invested more than 10% of my net assets in non-readily realisable securities; and

(b) I undertake that in the twelve months following the date below, I will not invest more than 10% of my net assets in non-readily realisable securities.

Net assets for these purposes do not include:

(a) the property which is my primary residence or any money raised through a loan secured on that property;

(b) any rights of mine under a qualifying contract of insurance; or

(c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled; or

(d) any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities.

Signature:

Date:"

4.7.11 G ■ COBS 4.7.7R 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.

4.7.11A G

4.7.11A G ■ COBS 4.7.7R does not apply to *speculative illiquid securities*. *Firms*, *TP firms* and Gibraltar-based firms (having the same meaning as in the *Gibraltar Order*) are reminded of the restrictions on *financial promotions* in relation to *speculative illiquid securities* in ■ COBS 4.14.

4.7.12 G Where a *firm communicates* or *approves direct offer financial promotions* relating to both *non-readily realisable securities* and *P2P agreements* or *P2P portfolios*, the condition in ■ COBS 4.7.7R(2) may be satisfied by the *retail*

client signing a combined statement that meets the requirements in ■ COBS 4.7.9R or ■ COBS 4.7.10R, as applicable, in respect of both *non-readily realisable securities* and *P2P agreements* or *P2P portfolios*.

4.7.13 G In relation to a *P2P agreement* or a *P2P portfolio*, a *firm* may communicate to a *retail client* information about a *P2P agreement* or a *P2P portfolio* before needing to satisfy the conditions in ■ COBS 4.7.7R(2) and ■ (3), 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 ■ 18.12.28R, including information about:

(1) the identity of the borrower(s);

(2) 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;

(3) the term;

(4) the risk categorisation; and

(5) a description of any security interest, insurance, guarantee or other risk mitigation measures adopted by the *firm*.

4.8 Cold calls and other promotions that are not in writing

Application

4.8.1 R This section applies to a *firm* in relation to the communication of a *financial promotion* that is not in writing, but it does not apply:

(1) to the extent that the *financial promotion* is an *excluded communication*;

(2) if the *financial promotion* is *image advertising*;

(3) if the financial promotion is a *non-retail communication*;

(4) [deleted]

(5) to the extent that the *financial promotion* relates to a *pure protection contract* that is a *long-term care insurance contract*.

Restriction on cold calling

4.8.2 R A *firm* must not make a *cold call* unless:

(1) the recipient has an established existing client relationship with the *firm* and the relationship is such that the recipient envisages receiving *cold calls*; or

(2) the *cold call* relates to a generally marketable *packaged product* which is not:

(a) a *higher volatility fund*; or

(b) a *life policy* with a link (including a potential link) to a *higher volatility fund*; or

(3) the *cold call* relates to a *controlled activity* to be carried on by an *authorised person* or *exempt person* and the only *controlled investments* involved or which reasonably could be involved are:

(a) readily realisable securities (other than warrants); and

(b) generally marketable non-geared *packaged products*.

Promotions that are not in writing

4.8.3 **R** A *firm* must not *communicate* a solicited or unsolicited *financial promotion* that is not in writing, to a *client* outside the *firm's* premises, unless the *person communicating* it:

(1) only does so at an appropriate time of the day;

(2) identifies himself and the *firm* he represents at the outset and makes clear the purpose of the communication;

(3) clarifies if the *client* would like to continue with or terminate the communication, and terminates the communication at any time that the *client* requests it; and

(4) gives a contact point to any *client* with whom he arranges an appointment.

4.9 Financial promotions with an overseas element

Application

4.9.1 R

(1) Subject to (2) and (3), this section applies to a *firm* in relation to the *communication* or *approval* of a *financial promotion* that relates to the business of an *overseas person*.

(2) This section does not apply to a *firm* in relation to its *MiFID or equivalent third country business*.

(3) If a communication relates to a *firm's* business that is not *MiFID or equivalent third country business*, this section does not apply:

(a) to the extent that it is an *excluded communication*;

(b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;

(c) if it is *image advertising*;

(d) if it is a *non-retail communication*;

(e) [deleted]

(f) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

4.9.2 G

Approving a *financial promotion* for *communication* by an *unauthorised person* is not *MiFID or equivalent third country business*.

Financial promotions for the business of an overseas person

4.9.3 R

A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a particular *relevant investment* or *relevant business* of an *overseas person*, unless:

(1) the *financial promotion* makes clear which *firm* has *approved* or *communicated* it and, where relevant, explains:

(a) that the *rules* made under the *Act* for the protection of *retail clients* do not apply;

(b) the extent and level to which the *compensation scheme* will be available, or if the scheme will not be available, a statement to that effect; and

(c) if the communicator wishes, the protection or compensation available under another system of regulation; and

(2) the *firm* has taken reasonable steps to satisfy itself that the *overseas person* will deal with *retail clients* in the *United Kingdom* in an honest and reliable way.

Financial promotions for an overseas long-term insurer

4.9.4 R A *firm* may only*communicate* or *approve* a *financial promotion* to enter into a *life policy* with a *person* who is:

(1) an *authorised person*; or

(2) an *exempt person* who is exempt in relation to *effecting or carrying out contracts of insurance* of the *class* to which the *financial promotion* relates; or

(3) an *overseas long-term insurer* that is entitled under the law of its home country or territory to carry on there *insurance business* of the *class* to which the *financial promotion* relates.

4.9.5 R A *financial promotion* for an *overseas long-term insurer*, which has no establishment in the *United Kingdom*, must include:

(1) the full name of the *overseas long-term insurer*, the country where it is registered, and, if different, the country where its head office is situated;

(2) a prominent statement that 'holders of policies issued by the company will not be protected by the Financial Services Compensation Scheme if the company becomes unable to meet its liabilities to them'; and

(3) if any trustee, investment manager or *United Kingdom* agent of the *overseas long-term insurer* is named which is not independent of the *overseas long-term insurer*, a prominent statement of that fact.

4.9.6 R A *financial promotion* for an *overseas long-term insurer* which is authorised to carry on *long-term insurance business* in any country or territory listed in paragraph (c) of the Glossary definition of *overseas long-term insurer* must also include:

(1) the full name of any trustee of property of any description which is retained by the *overseas long-term insurer* in respect of the promoted contracts;

(2) an indication whether the investment of such property (or any part of it) is managed by the *overseas long-term insurer* or by another *person* and the full name of any *investment manager*;

(3) the registered office of any such trustee and of any *investment manager* and of his principal office (if different); and

(4) where any *person* in the *United Kingdom* takes, or may take, any steps on behalf of the *overseas long-term insurer* to enter into a promoted contract, the following details:

(a) the full name of the *overseas long-term insurer*;

(b) the registered office, head office or principal place of business of that *person* in the *United Kingdom*; and

(c) if there is more than one such *person*, the principal or main *person* in the *United Kingdom*.

4.9.7 R If a *financial promotion* relates to a *life policy* with an *overseas long-term insurer* but does not name the *overseas long-term insurer* by giving its full name or its business name:

(1) it must include the following prominent statement: "This financial promotion relates to an insurance company which does not, and is not authorised to, carry on in any part of the United Kingdom the class of insurance business to which this promotion relates. This means that the management and solvency of the company are not supervised by the *Financial Conduct Authority* or the *Prudential Regulation Authority*. Holders of policies issued by the company will not have the right to complain to the Financial Ombudsman Service if they have a complaint against the company and will not be protected by the Financial Services Compensation Scheme if the company should become unable to meet its liabilities to them"; and

(2) if it also refers to other *investments*, it must make this clear.

4.10 Systems and controls and approving and communicating financial promotions

Systems and controls

4.10.1 G The *rules* in ■ SYSC 3 (and also for *Solvency II firms*, the PRA Rulebook: Solvency II firms: Conditions Governing Business) and ■ SYSC 4 require a *firm* that communicates with a *client* in relation to *designated investment business*, or *communicates* or *approves* a *financial promotion*, to put in place systems and controls or policies and procedures, or an effective internal control system, in order to comply with the *rules* in this chapter.

Approving financial promotions

4.10.2 R

(1) Before a *firm approves* a *financial promotion* for *communication* by an *unauthorised person*, it must confirm that the *financial promotion* complies with the *financial promotion rules*.

(2) If, at any time after a *firm* has complied with (1), a *firm* becomes aware that a *financial promotion* no longer complies with the *financial promotion rules*, it must withdraw its *approval* and notify any *person* that it knows to be relying on its *approval* as soon as reasonably practicable.

(3) When *approving* a *financial promotion*, the *firm* must confirm compliance with the *financial promotion rules* that would have applied if the *financial promotion* had been communicated by a *firm* other than in relation to *MiFID or equivalent third country business*.

4.10.3 G

(1) Section 21(1) of the *Act* (Restrictions on financial promotion) prohibits an *unauthorised person* from *communicating* a *financial promotion*, in the course of business, unless an exemption applies or the *financial promotion* is *approved* by a *firm*. Many of the *rules* in this chapter apply when a *firm approves* a *financial promotion* in the same way as when a *firm communicates* a *financial promotion* itself.

(2) A *firm* may also wish to *approve* a *financial promotion* that it *communicates* itself. This would ensure that an *unauthorised person* who then also *communicates* the *financial promotion* to another *person* will not contravene the restriction on *financial promotion* in the *Act* (section 21).

(3) *Approving* a *financial promotion* for *communication* by an *unauthorised person* is not *MiFID, equivalent third country or optional exemption business*.

(4) A *firm* may not *approve* a *financial promotion* relating to an *unregulated collective investment scheme* unless the *firm* would be able to *communicate* the promotion without breaching section 238(1) of the *Act* (see section 240 of the *Act*). The exemptions from that section in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (as amended from time to time) are relevant.

4.10.4 R A *firm* must not *approve* a *financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

4.10.5 R If a *firm approves* a *financial promotion* in circumstances in which one or more of the *financial promotion rules*, or the prohibition on approval of promotions for *collective investment schemes* in section 240(1) of the *Act* (Restriction on approval), are expressly disapplied, the *approval* must be given on terms that it is limited to those circumstances.

4.10.6 G For example, if a *firm approves* a *financial promotion* for *communication* to a *professional client* or an *eligible counterparty*, the *approval* must be limited to *communication* to such *persons*.

4.10.7 G If an *approval* is limited, and an *unauthorised person communicates* the *financial promotion* to *persons* not covered by the *approval*, the *unauthorised person* may commit an offence under the restriction on financial promotion in the *Act* (section 21). A *firm* giving a limited *approval* may wish to notify the *unauthorised person* accordingly.

Communicating financial promotions

4.10.8 G If a *firm* continues to *communicate* a *financial promotion* when the *financial promotion* no longer complies with the *rules* in this chapter, it will breach those *rules*.

4.10.9 G A *financial promotion* which is clearly only relevant at a particular date will not cease to comply with the *financial promotion rules* merely because the passage of time has rendered it out-of-date; an example would be a dated analyst's report.

Relying on another firm's confirmation of compliance

4.10.10 R (1) A *firm* (A) will not contravene any of the *financial promotion rules* if it *communicates* a *financial promotion* which has been produced by another *person* and:

(a) A takes reasonable care to establish that another *firm* (B) has confirmed that the *financial promotion* complies with the *financial promotion rules*;

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(b) A takes reasonable care to establish that it *communicates* the *financial promotion* only to recipients of the type for whom it was intended at the time B carried out the confirmation exercise; and

(c) so far as A is, or ought reasonably to be, aware:

(i) the *financial promotion* has not ceased to be fair, clear and not misleading since that time; and

(ii) B has not withdrawn the *financial promotion*.

(2) This *rule* does not apply in relation to *MiFID, equivalent third country or optional exemption business*.

4.10.11 G A *firm* should inform anyone relying on its confirmation of compliance if it becomes aware that the *financial promotion* no longer complies with the *rules* in this chapter.

4.11 Record keeping: financial promotion

4.11.1 R

(1) A *firm* must make an adequate record of any *financial promotion* it *communicates* or *approves*, other than a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.

(2) For a telemarketing campaign, a *firm* must make an adequate record of copies of any scripts used.

(2A) If a *firm communicates* or *approves* an invitation or inducement to participate in, acquire, or underwrite a *non-mainstream pooled investment* which is addressed to or disseminated in such a way that it is likely to be received by a *retail client*:

(a) the *person* allocated the *compliance oversight function* in the *firm* must make a record at or near the time of the communication or approval certifying that the invitation or inducement complies with the restrictions set out in section 238 of the *Act* and in ■ COBS 4.12.3 R, as applicable;

(b) the making of the record required in (a) may be delegated to one or more *employees* of the *firm* who report to and are supervised by the *person* allocated the *compliance oversight function*, provided the process for certification of compliance has been reviewed and approved by the *person* allocated the *compliance oversight function* no more than 12 months before the date of the invitation or inducement;

(c) when making the record required in (a), the *firm* must make a record of which exemption was relied on for the purposes of the invitation or inducement, together with the reason why the *firm* is satisfied that that exemption applies;

(d) where the *firm* relies on an exemption that requires investor certification and warnings to investors, the record required in (a) must include a record of any certificate or investor statement (as signed by the investor) and of any warnings or indications required by the exemption;

(e) if the exemption relied on is that for an *excluded communication* under ■ COBS 4.12.4R (5), the *firm* must identify in the record required in (a) which type of *financial promotion* defined as an *excluded communication* corresponds to the invitation or inducementbeing made, including, where applicable, which article in the *Financial Promotion Order* or in the *Promotion of Collective Investment Schemes Order* was relied on for the

purposes of the invitation or inducement, together with the reason why the *firm* is satisfied that the exemption applies;

(3) A *firm* must retain the record in relation to a *financial promotion* relating to:

(a) a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely;

(b) a *life policy*, *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*, for six years;

(c) *MiFID or equivalent third country business*, for five years; and

(d) any other case, for three years.

(4) If a communication relates to a *firm's MiFID, equivalent third country or optional exemption business*, this section does not apply:

(a) to the extent that the communication is a *third party prospectus*;

(b) if it is *image advertising*;

(c) if it is a *non-retail communication*.

(5) If a communication relates to a *firm's* business that is not *MiFID or equivalent third country business*, this section does not apply:

(a) to the extent that it is an *excluded communication*;

(b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;

(c) if it is *image advertising*;

(d) if it is a *non-retail communication*;

(e) [deleted]

(f) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

4.11.1A G A *MiFID investment firm*, *third country investment firm* or *MiFID optional exemption firm* should refer to the requirements on record keeping in the *MiFID Org Regulation* and ■ SYSC 9.

4.11.2 G A *firm* should consider maintaining a record of why it is satisfied that the *financial promotion* complies with the *financial promotion rules*.

4.11.3 G If the *financial promotion* includes market information that is updated continuously in line with the relevant market, the record-keeping *rules* do not require a firm to record that information.

4.12 Restrictions on the promotion of non-mainstream pooled investments

Restrictions on the promotion of non-mainstream pooled investments

4.12.3 R

(1) A *firm* must not *communicate* or *approve* an invitation or inducement to participate in, acquire, or underwrite a *non-mainstream pooled investment* where that invitation or inducement is addressed to or disseminated in such a way that it is likely to be received by a *retail client*.

(2) The restriction in (1) is subject to ■ COBS 4.12.4 R and does not apply to *units* in *unregulated collective investment schemes*, which are subject to a statutory restriction on promotion in section 238 of the *Act*.

(3) References to a *firm* in this section include a *TP firm* to the extent that this section does not already apply to those *TP firms* as a result of ■ GEN 2.2.26R.

(4) References to a *firm* in this section include a Gibraltar-based firm (having the same meaning as in the *Gibraltar Order*) to the extent that the *rule* does not already apply to such a Gibraltar-based firm as a result of ■ GEN 2.3.1R.

Exemptions from the restrictions on the promotion of non-mainstream pooled investments

4.12.4 R

(1) The restriction in ■ COBS 4.12.3 R does not apply if the promotion falls within an exemption in the table in (5) below in accordance with (3).

(2) A *firm* may communicate an invitation or inducement to participate in an *unregulated collective investment scheme* without breaching the restriction on promotion in section 238 of the *Act* if the promotion falls within an exemption in the table in (5) below in accordance with (3).

(3) A promotion falls within an exemption in the table in (5) below if:

(a) it is made to or directed at only those recipients whom the *firm* has taken reasonable steps to establish are *persons* in the middle column of the table; and

(b) where the third column of the table refers to the need for a preliminary assessment of suitability, that assessment is

undertaken before the promotion is made to or directed at the recipient.

(4) A *firm* may rely on more than one exemption in relation to the same invitation or inducement.

(5) Title of Exemption	Promotion to:	Promotion of a non-mainstream pooled investment which is:
1. Replacement products and rights issues	A *person* who already participates in, owns, holds rights to or interests in, a *non-mainstream pooled investment* that is being liquidated or wound down or which is undergoing a rights issue. [See Note 1.]	1. A *non-mainstream pooled investment* which is intended by the operator or manager to absorb or take over the assets of that *non-mainstream pooled investment*, or which is being offered by the operator or manager of that *non-mainstream pooled investment* as an alternative to cash on its liquidation; or 2. *Securities* offered by the existing *non-mainstream pooled investment* as part of a rights issue.
2. Certified high net worth investors	An individual who meets the requirements set out in COBS 4.12.6 R, or a person (or persons) legally empowered to make investment decisions on behalf of such individual.	Any *non-mainstream pooled investment* the firm considers is likely to be suitable for that individual, based on a preliminary assessment of the *client's* profile and objectives. [See COBS 4.12.5G (2).]
3. Enterprise and charitable funds	A *person* who is eligible to participate or invest in an arrangement constituted under: (1) the Church Funds Investment Measure 1958; (2) section 96 or 100 of the Charities Act 2011; (3) section 25 of the Charities Act (Northern Ireland) 1964; (4) the Regulation on European Venture Capital Funds ('EuVECAs') or the *RVECA Regulation* ('RVECAs'); or	Any *non-mainstream pooled investment* which is such an arrangement.

(5) Title of Exemption	Promotion to:	Promotion of a non-mainstream pooled investment which is:
	(5) the Regulation on European Social Entrepreneurship Funds ('EuSEFs') or the *SEF Regulation* ('SEFs').	
4. Eligible employees	An eligible *employee*, that is, a *person* who is: (1) an officer; (2) an *employee*; (3) a former officer or *employee*; or (4) a member of the immediate family of any of (1) - (3), of an employer which is (or is in the same *group* as) the *firm*, or which has accepted responsibility for the activities of the *firm* in carrying out the *designated investment business* in question.	1. A *non-mainstream pooled investment*, the instrument constituting which: A. restricts the property of the *non-mainstream pooled investment*, apart from cash and near cash, to: (1) (where the employer is a company) *shares* in and *debentures* of the *company* or any other connected *company*; [See Note 2.] (2) (in any case), any property, provided that the *non-mainstream pooled investment* takes the form of: (i) a limited *partnership*, under the terms of which the employer (or connected *company*) will be the unlimited partner and the eligible employees will be some or all of the limited partners; or (ii) a trust which the *firm* reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than *charges*) for *investment* transactions earlier entered into, which the eligible *employee* was not aware of at the time he entered into them; and B. (in a case falling within A(1) above) restricts participation in the *non-mainstream*

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(5) Title of Exemption	Promotion to:	Promotion of a non-mainstream pooled investment which is:
		pooled investment to eligible *employees*, the employer and any connected *company*. 2. Any *non-mainstream pooled investment*, provided that the participation of eligible employees is to facilitate their co-investment: (i) with one or more *companies* in the same *group* as their employer (which may include the employer); or (ii) with one or more *clients* of such a *company*.
5. Members of the Society of Lloyd's	A *person* admitted to membership of the Society of Lloyd's or any *person* by law entitled or bound to administer his affairs.	A *scheme* in the form of a limited *partnership* which is established for the sole purpose of underwriting *insurance business* at Lloyd's.
6. Exempt persons	An exempt *person* (other than a *person* exempted only by section 39 of the *Act* (Exemption of appointed representatives)) if the *financial promotion* relates to a *regulated activity* in respect of which the *person* is exempt from the *general prohibition*.	Any *non-mainstream pooled investment*.
7. Non-retail clients	An *eligible counterparty* or a *professional client*.	Any *non-mainstream pooled investment* in relation to which the *client* is categorised as a *professional client* or *eligible counterparty*. [See Note 4.]
8. Certified sophisticated investors	An individual who meets the requirements set out in COBS 4.12.7 R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of an	Any *non-mainstream pooled investment*.

(5) Title of Exemption	Promotion to:	Promotion of a non-mainstream pooled investment which is:
	other *person* who is the *firm's client*.	
9. Self-certified sophisticated investors	An individual who meets the requirements set out in COBS 4.12.8 R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another *person* who is the *firm's client*.	Any *non-mainstream pooled investment* the *firm* considers is likely to be suitable for that *client*, based on a preliminary assessment of the *client's* profile and objectives. [See COBS 4.12.5G (2)]
10. Solicited advice	Any *person*.	Any *non-mainstream pooled investment*, provided the communication meets all of the following requirements: (a) the communication only amounts to a *financial promotion* because it is a *personal recommendation* on a *non-mainstream pooled investment*; (b) the *personal recommendation* is made following a specific request by that *client* for advice on the merits of investing in the *non-mainstream pooled investment*; and (c) the *client* has not previously received a *financial promotion* or any other communication from the *firm* (or from a *person* connected to the *firm*) which is intended to influence the *client* in relation to that *non-mainstream pooled investment*. [See Note 3.]
11. Excluded communications	Any *person*.	Any *non-mainstream pooled investment*, provided the *financial promotion* is an *excluded communication*.[See COBS 4.12.12G, COBS 4.12.13G and COBS 4.12.13AG.]

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(5) Title of Exemption	Promotion to:	Promotion of a non-mainstream pooled investment which is:
12. [deleted]		
13. US persons	A *person* who is classified as a United States person for tax purposes under United States legislation or who owns a US qualified retirement plan.	Any investment *company* registered and operated in the United States under the Investment Company Act 1940.

The following Notes explain certain words and phrases used in the table above.

Note 1 Promotion of *non-mainstream pooled investments* to a category of person includes any nominee company acting for such a person.

Note 2 A *company* is 'connected' with another *company* if:
(a) they are both in the same *group*; or
(b) one *company* is entitled, either alone or with another *company* in the same *group*, to exercise or control the exercise of a majority of the voting rights attributable to the *share* capital, which are exercisable in all circumstances at any general meeting of the other *company* or of its *holding company*.

Note 3 A *person* is connected with a *firm* if it acts as an *introducer* or *appointed representative* for that *firm* or if it is any other *person*, regardless of *authorisation* status, who has a relevant business relationship with the *firm*.

Note 4 In deciding whether a promotion is permitted under the rules of this section or under section 238 of the Act, *firms* may use the *client* categorisation regime that applies to business other than *MiFID or equivalent third country business*. (This is the case even if the *firm* will be carrying on a *MiFID* activity at the same time as or following the promotion.)

Advice and preliminary assessment of suitability

4.12.5 G

(1) Where a *firm* communicates any promotion of a *non-mainstream pooled investment* in the context of advice, it should have regard to and comply with its obligations under ■ COBS 9 or ■ 9A (as applicable). *Firms* should also be mindful of the appropriateness requirements in ■ COBS 10 and ■ 10A which apply to a wide range of non-advised services.

(2) (a) The effect of ■ COBS 4.12.4R(3)(b) is that where a *firm* wishes to rely on exemptions 2 (certified high net worth investors) or 9 (self-certified sophisticated investors), as provided by ■ COBS 4.12.4R (5), the preliminary assessment of suitability must be undertaken before promotion of the *non-mainstream pooled investment* is made to or directed at clients (in addition to other requirements).

(b) There is no duty to communicate the preliminary assessment of suitability to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless

it complies with the rules in ■ COBS 9 or ■ 9A (as applicable) on suitability.

(c) The requirement for a preliminary assessment of suitability does not extend to a full suitability assessment, unless advice is being offered in relation to the *non-mainstream pooled investment* being promoted, in which case the requirements in ■ COBS 9 or ■ 9A apply (as applicable). However, it requires that the *firm* takes reasonable steps to acquaint itself with the *client's* profile and objectives in order to ascertain whether the *non-mainstream pooled investment* under contemplation is likely to be suitable for that *client*. The *firm* should not promote the *non-mainstream pooled investment* to the *client* if it does not consider it likely to be suitable for that *client* following such preliminary assessment.

Definition of sophisticated and high net worth investors

4.12.6 R A *certified high net worth investor* is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:

"HIGH NET WORTH INVESTOR STATEMENT

I make this statement so that I can receive promotional communications which are exempt from the restriction on promotion of non-mainstream pooled investments. The exemption relates to certified high net worth investors and I declare that I qualify as such because at least one of the following applies to me:

- I had, throughout the financial year immediately preceding the date below, an annual **income** to the value of **£100,000 or more**. Annual income for these purposes does not include money withdrawn from my pension savings (except where the withdrawals are used directly for income in retirement).
- I held, throughout the financial year immediately preceding the date below, **net assets** to the value of **£250,000 or more**. Net assets for these purposes do **not** include:

(a) the property which is my primary residence or any money raised through a loan secured on that property; or

(b) any rights of mine under a qualifying contract of insurance; or

(c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled; or

any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-mainstream pooled investments.

Signature:

Date: "

4.12.7 R A *certified sophisticated investor* is an individual:

(1) who has a written certificate signed within the last 36 months by a *firm* confirming he has been assessed by that *firm* as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in *non-mainstream pooled investments*; and

(2) who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:

"SOPHISTICATED INVESTOR STATEMENT

I make this statement so that I can receive promotional communications which are exempt from the restriction on promotion of non-mainstream pooled investments. The exemption relates to certified sophisticated investors and I declare that I qualify as such.

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-mainstream pooled investments.

Signature:

Date: "

4.12.8 R A *self-certified sophisticated investor* is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:

"SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT

I declare that I am a self-certified sophisticated investor for the purposes of the restriction on promotion of non-mainstream pooled investments. I understand that this means:

(i) I can receive promotional communications made by a person who is authorised by the Financial Conduct Authority which relate to investment activity in non-mainstream pooled investments;

(ii) the investments to which the promotions will relate may expose me to a significant risk of losing all of the property invested.

I am a self-certified sophisticated investor because at least one of the following applies:

(a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;

(b) I have made more than one investment in an unlisted company in the two years prior to the date below;

(c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;

(d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me seek advice from someone who specialises in advising on non-mainstream pooled investments.

Signature:

Date: ”

Sophisticated and high net worth investors: guidance on certification by authorised person and reliance on self-certification

4.12.9 G

(1) A *firm* which wishes to rely on any of the *certified high net worth investor* exemptions (see Part I of the Schedule to the *Promotion of Collective Investment Schemes Order*, Part I of Schedule 5 to the *Financial Promotions Order* and ■ COBS 4.12.6 R) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should take reasonable steps to ascertain that the *retail client* does, in fact, meet the income and net assets criteria set out in the relevant statement for *certified high net worth investors*.

(2) In addition, the *firm* should consider whether the promotion of the *non-mainstream pooled investment* is in the interests of the *retail client* and whether it is fair to make the promotion to that *client* on the basis that the *client* is a *certified high net worth investor*, having regard to the generally complex nature of *non-mainstream pooled investments*. A *retail client* who meets the criteria for a *certified high net worth investor* but not for a *certified sophisticated investor* may be unable to properly understand and evaluate the risks of the *non-mainstream pooled investment* in question.

4.12.10 G

(1) A *firm* which is asked to or proposes to assess and certify a *retail client* as a *certified sophisticated investor* (see article 23 of the *Promotion of Collective Investment Schemes Order*, article 50 of the *Financial Promotions Order* and ■ COBS 4.12.7 R) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should carry out that assessment with due skill, care and diligence, having regard to the generally complex nature of *non-mainstream pooled investments* and the level of experience, knowledge and expertise the *retail client* being assessed must possess in order to be fairly and reasonably assessed and certified as a sophisticated investor.

(2) (a) For example, a *retail client* whose *investment* experience is limited to mainstream *investments* such as *securities* issued by *listed companies*, *life policies* or *units* in *regulated collective investment schemes* (other than *qualified investor schemes* or *long-term asset funds*) is generally unlikely to possess the requisite knowledge to adequately understand the risks associated with investing in *non-mainstream pooled investments*.

(b) In exceptional circumstances, however, the *retail client* may have acquired the requisite knowledge through means other than his own investment experience, for example, if the *retail client* is a professional of several years’ experience with the design, operation or marketing of complex investments such as *options*, *futures*, *contracts for differences* or *non-mainstream pooled investments*.

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4.12.11 G

(1) A *firm* which wishes to rely on any of the *self-certified sophisticated investor* exemptions (see Part II of the Schedule to the *Promotion of Collective Investment Schemes Order*, Part II of Schedule 5 to the *Financial Promotions Order* and ■ COBS 4.12.8 R) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should consider whether the promotion of the *non-mainstream pooled investment* is in the interests of the *client* and whether it is fair to make the promotion to that *client* on the basis of self-certification.

(2) For example, it is unlikely to be appropriate for a *firm* to make a promotion under any of the *self-certified sophisticated investor* exemption without first taking reasonable steps to satisfy itself that the investor does in fact have the requisite experience, knowledge or expertise to understand the risks of the *non-mainstream pooled investment* in question. A *retail client* who meets the criteria for a *self-certified sophisticated investor* but not for a *certified sophisticated investor* may be unable to properly understand and evaluate the risks of a *non-mainstream pooled investment* which invests wholly or predominantly in assets other than *shares* in or *debentures* of unlisted *companies*.

One-off promotions

4.12.12 G

(1) A firm which wishes to rely on one of the *one-off promotion* exemptions provided by the *Promotion of Collective Investment Schemes* or the *Financial Promotion Order* to promote a *non-mainstream pooled investment* to a *retail client* should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should consider whether the promotion of the *non-mainstream pooled investment* is in the interests of the *client* and whether it is fair to make the promotion to that *client* on the basis of a *one-off promotion* exemption.

(2) The *one-off promotion* exemptions permit the promotion of investments to clients under certain conditions (see ■ PERG 8.14.3 G to ■ PERG 8.14.13 G for guidance on the scope of the one-off exemptions in the *Financial Promotion Order*). *Firms* should note that, in the *FCA's* view, promotion of a *non-mainstream pooled investment* to a *retail client* who is not a *certified high net worth investor*, a *certified sophisticated investor* or a *self-certified sophisticated investor* is unlikely to be appropriate or in that *client's* best interests.

Qualified investor schemes

4.12.13 G

(1) A *firm* which wishes to rely on the *excluded communications* exemption in ■ COBS 4.12.4R (5) to promote *units* in a *qualified investor scheme* to a *retail client* should have regard to its duties under the *Principles* and the *client's best interests rule*.

(2) As explained in ■ COLL 8.1, *qualified investor schemes* are intended only for *professional clients* and *retail clients* who are sophisticated investors. *Firms* should note that, in the *FCA's* view, promotion of *units* in a *qualified investor scheme* to a *retail client* who is not a *certified sophisticated investor* or a *self-certified sophisticated investor* is unlikely to be appropriate or in that client's best interests.

Long-term asset funds

4.12.13A G A *firm* which wishes to rely on the *excluded communications* exemption in ■ COBS 4.12.4R(5) to promote *units* in a *long-term asset fund* to a *retail client* should have regard to its duties under the *Principles* and the *client's best interests rule*. As explained in ■ COLL 15.1.4G (Long-term asset funds – explanation), *long-term asset funds* are *authorised funds* which are intended only for *professional clients* and for *retail clients* who are sophisticated investors or *certified high net worth investors*.

Electronic documents

4.12.14 G In this section:

(1) any requirement that a document is signed may be satisfied by an electronic signature or electronic evidence of assent; and

(2) any references to writing should be construed in accordance with ■ GEN 2.2.14R and its related *guidance* provisions.

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4.13 UCITS

Application

4.13.1 R (1) This section applies to a *firm* in relation to a communication to a *client*, including an *excluded communication*, that is a marketing communication within the meaning of the *UCITS Directive*.

(2) This section does not apply to:

(a) *image advertising*; or

(b) the *instrument constituting the fund*, the *prospectus*, the *key investor information* or the periodic reports and accounts of a *UCITS scheme*.

[**Note:** recital (58) of the *UCITS Directive*]

Marketing communications relating to UCITS schemes

4.13.2 R (1) A *firm* must ensure that a marketing communication that comprises an invitation to purchase *units* in a *UCITS scheme* and that contains specific information about the *scheme*:

(a) makes no statement that contradicts or diminishes the significance of the information contained in the *prospectus* and the *key investor information document* for the scheme;

(b) indicates that a *prospectus* exists for the *scheme* and that the *key investor information document* is available; and

(c) specifies where and in which language such information or *documents* may be obtained by investors or potential investors or how they may obtain access to them.

(2) Where a *UCITS scheme* may invest more than 35% of its *scheme property* in *transferable securities* and money market instruments issued or guaranteed by the *United Kingdom* or an *EEA State*, one or more of its local authorities, a third country or a public international body to which the *United Kingdom* or one or more *EEA States* belong, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy and indicating the particular *states*, local authorities or public international bodies in the *securities* of which the *scheme* intends to invest or has invested more than 35% of its *scheme property*.

(3) Where a *UCITS scheme* invests principally in *units* in *collective investment schemes*, *deposits* or *derivatives*, or replicates a stock or debt securities index in accordance with ■ COLL 5.2.31 R (Schemes replicating an index), the *firm* must ensure that a marketing

communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy.

(4) Where the net asset value of a *UCITS scheme* or has, or is likely to have, high volatility owing to its portfolio composition or the portfolio management techniques that are or may be used, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to that characteristic.

[**Note:** articles 54(3), 70(2), 70(3) and 77 of the *UCITS Directive*]

Marketing communications relating to a feeder UCITS

4.13.3 R A *firm* must ensure that a marketing communication (other than a *key investor information document*) relating to a *feeder UCITS* contains a statement that the *feeder UCITS* permanently invests at least 85% in value of its assets in *units* of its *master UCITS*.

[**Note:** article 63(4) of the *UCITS Directive*]

4.14 Restrictions on the promotion of speculative illiquid securities to retail clients

Application and purpose

4.14.1 R This section applies to:

(1) *firms*;

(2) *TP firms*; and

(3) Gibraltar-based firms,

when *approving* or *communicating financial promotions* in relation to *speculative illiquid securities*.

4.14.2 G In addition to the *persons* listed in ■ COBS 4.14.1R, *persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

(1) Part 7 of the *EU Exit Passport Regulations*; or

(2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)

are required to comply with the *rules* in this section as a consequence of:

(3) regulation 59 of the *EU Exit Passport Regulations*; or

(4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

4.14.3 R Throughout this section:

(1) References to *firm* include references to a Gibraltar-based firm.

(2) Gibraltar-based firm has the same meaning as in the *Gibraltar Order*.

4.14.4 G (1) The *rules* in this section are intended to ensure that *financial promotions* relating to *speculative illiquid securities* are not *communicated* to ordinary retail investors.

(2) The *rules* in this section therefore restrict *firms* and *TP firms* *approving* or *communicating financial promotions* in relation to

speculative illiquid securities which are addressed to or disseminated in such a way that they are likely to be received by a *retail client*, subject to certain exemptions.

(3) The *rules* also ensure *financial promotions* contain prominent information on key risks, costs and charges related to the *speculative illiquid security*.

(4) The *rules* reflect the often complex and high-risk nature of *speculative illiquid securities*.

(5) The definition of *speculative illiquid security* can be found in ■ COBS 4.14.20R.

Restriction on the promotion of speculative illiquid securities to retail clients

4.14.5 R

(1) A *firm* or a *TP firm* must not *communicate* or *approve* a *financial promotion* in relation to a *speculative illiquid security* where that *financial promotion* is addressed to or disseminated in such a way that it is likely to be received by a *retail client*.

(2) The restriction in (1) is subject to ■ COBS 4.14.6R.

Exemptions from the restriction on the promotion of speculative illiquid securities

4.14.6 R

(1) The restriction in ■ COBS 4.14.5R(1) does not apply if the *financial promotion*:

(a) falls within an exemption in the first column in the table in (3) below; and

(b) is made to or directed at only those recipients whom the *firm* or *TP firm* has taken reasonable steps to establish are *persons* in the middle column of the table; and

(c) where the third column of the table refers to the need for a preliminary assessment of suitability, that assessment is undertaken before the *financial promotion* is made to or directed at the recipient.

(2) A *firm* or a *TP firm* may rely on more than one exemption in relation to the same *financial promotion*.

(3) Title of exemption	Promotion to:	Promotion of speculative illiquid security which is:
1. Certified high net worth investor	An individual who meets the requirements set out in COBS 4.14.17R or a *person* (or *persons*) legally empowered to make investment decisions on behalf of such an individual.	Any *speculative illiquid security* the *firm* or *TP firm* considers is likely to be suitable for that individual, based on a preliminary assessment of the *client's* profile and objectives. [See COBS 4.14.7G]
2. Certified sophisticated investor	An individual who meets the requirements set out in	Any *speculative illiquid security*.

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(3) Title of exemption	Promotion to:	Promotion of speculative illiquid security which is:
	COBS 4.14.18R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another *person* who is the *firm's* or the *TP firm's client*.	
3. Self-certified sophisticated investor	An individual who meets the requirements set out in COBS 4.14.19R including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another *person* who is the *firm's* or *TP firm's client*.	Any *speculative illiquid security* the *firm* or *TP firm* considers is likely to be suitable for that individual, based on a preliminary assessment of the *client's* profile and objectives. [See COBS 4.14.7G].
4. *Excluded communications*	Any *person*.	Any *speculative illiquid security*, provided the *financial promotion* is an *excluded communication*.

Preliminary assessment of suitability

4.14.7 G

(1) The effect of ■ COBS 4.14.6R(1)(c) is that where a *firm* or *TP firm* wishes to rely on exemptions 1 (certified high net worth investors) or 3 (self-certified sophisticated investors), the preliminary assessment of suitability must be undertaken before the *financial promotion* of the *speculative illiquid security* is made to or directed at *clients* (in addition to other requirements).

(2) There is no duty to communicate the preliminary assessment of suitability to the *client*. If the *firm* or the *TP firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in ■ COBS 9 or ■ 9A (as applicable) on suitability.

(3) The requirement for a preliminary assessment of suitability does not extend to a full suitability assessment, unless advice is being offered in relation to the *speculative illiquid security* being promoted, in which case the requirements in ■ COBS 9 or ■ 9A apply (as applicable). However, it requires that the *firm* or *TP firm* takes reasonable steps to acquaint itself with the *client's* profile and objectives to ascertain whether the *speculative illiquid security* under contemplation is likely to be suitable for that *client*. The *firm* or *TP firm* should not promote the *speculative illiquid security* to the *client* if it does not consider it likely to be suitable for that client following such preliminary assessment.

Requirements governing the form and content of financial promotions for speculative illiquid securities

4.14.8 R Subject to ■ COBS 4.14.5R and ■ COBS 4.14.6R, a *firm* or *TP firm* must not communicate or approve a *financial promotion* which relates to a *speculative illiquid security* unless it contains:

(1) a risk warning that complies with ■ COBS 4.14.9R;

(2) if applicable, the date on which the *financial promotion* was *approved*; and

(3) statements that comply with ■ COBS 4.14.12R disclosing all costs, charges and commission.

4.14.9 R (1) For the purposes of ■ COBS 4.14.8R(1), and subject to ■ COBS 4.14.9R(2) and ■ COBS 4.14.9R(3), the *financial promotion* must contain the following risk warning:

> **You could lose all of your money invested in this product.**
>
> **This is a high-risk investment and is much riskier than a savings account.**

(2) Where the *financial promotion* contains a reference to an *innovative finance ISA*, the risk warning is as follows:

> **You could lose all of your money invested in this product.**
>
> **This is a high-risk investment and is much riskier than a savings account.**
>
> **ISA eligibility does not guarantee returns or protect you from losses.**

(3) Where the number of characters contained in the risk warnings in this *rule* exceeds the character limit permitted by a third-party marketing provider, the following risk warning must be used:

> **You could lose all of your money invested in this product.**

(4) Where the *financial promotion* does not appear on a website or mobile application, the risk warning must be provided in a *durable medium*.

4.14.10 R The relevant risk warning in ■ COBS 4.14.9R must be:

(1) prominent;

(2) contained within its own border and with bold and underlined text as indicated;

(3) if provided on a website or via a mobile application, statically fixed and visible at the top of the screen even when the *retail client* scrolls up or down the webpage; and

(4) if provided on a website, included on each linked webpage on the website.

4

4.14.11 G The relevant risk warning, including the font size, should be:

(1) proportionate to the *financial promotion*, taking into account the content, size and orientation of the *financial promotion* as a whole; and

(2) published so that it is clearly legible against a neutral background.

4.14.12 R For the purposes of ■ COBS 4.14.8R(3) the *financial promotion* must contain:

(1) a statement which expresses as a percentage the total amount of the capital raised by the issue of the *speculative illiquid security* which will be paid out in costs, fees, charges and commissions and other expenses to any third party;

(2) a statement which expresses as a cash sum the percentage referred to in (1) above; and

(3) in addition to the statements in (1) and (2) above, a statement which provides a breakdown of the actual or potential expenditure to be paid out of an investor's capital and details of the third party (or parties) who will receive it.

4.14.13 G

(1) There is an illustration of how a *firm* or *TP firm* should comply with ■ COBS 4.14.12R(2) in (2) below.

(2) Where a *firm* or *TP firm* pays 30% of the total amount of capital raised by the issue of *speculative illiquid securities* towards costs, fees, charges and commissions and other expenses to any third party, the statement should say: "For every £100 you invest, £30 will be paid to third parties to meet costs, fees, charges and commissions."

4.14.14 R The statements providing the percentage figure in ■ COBS 4.14.12R(1) and the cash sum in ■ COBS 4.14.12R(2) must be:

(1) prominent;

(2) contained together within their own border and with bold text;

(3) immediately follow the most prominent reference to the expected return on the *speculative illiquid security*; and

(4) published so that they are clearly legible against a neutral background.

4.14.15 G The statement providing the breakdown of expenditure in ■ COBS 4.14.12R(3) should be included in the *financial promotion* in a clear and prominent way.

4.14.16 G The purpose of the statements required by ■ COBS 4.14.12R is to enable an investor to consider the proportion of capital raised by an issue of *speculative illiquid securities* that will not be invested. This information should help the investor to assess the risk that the *issuer* will be unable to pay any advertised interest payments, other income or otherwise to repay the investor's capital at maturity.

Definitions of certified high net worth and sophisticated investors

4.14.17 R A certified high net worth investor is an individual who has signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the following terms:

"HIGH NET WORTH INVESTOR STATEMENT

I make this statement so that I can receive promotional communications which are exempt from the restriction on promotion of speculative illiquid securities. The exemption relates to high net worth investors and I declare that I qualify as such because at least one of the following applies to me:

I had, throughout the financial year immediately preceding the date below, an annual **income** to the value of **£100,000 or more**. Annual income for these purposes does not include money withdrawn from my pension savings (except where the withdrawals are used directly for income in retirement).

I held throughout the financial year immediately preceding the date below, **net assets** to the value of **£250,000 or more**. Net assets for these purposes do not include:

the property which is my primary residence or any money raised through a loan secured on that property; or

any rights of mine under a qualifying contract of insurance; or

any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled; or

any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on speculative illiquid securities.

Signature:

Date:

4.14.18 R A certified sophisticated investor is an individual who:

(1) has a written certificate signed within the last 36 *months* by a *firm* or *TP firm* confirming they have been assessed by that *firm* or *TP firm* as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in *speculative illiquid securities*; and

(2) has signed, within the period of twelve *months* ending with the day on which the communication is made, a statement in the following terms:

"SOPHISTICATED INVESTOR STATEMENT

I make this statement so that I can receive promotional communications which are exempt from the restriction on promotion of speculative illiquid securities. The exemption relates to certified sophisticated investors and I declare that I qualify as such.

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on speculative illiquid securities.

Signature:

Date: "

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4.14.19 R A self-certified sophisticated investor is an individual who has signed, within the period of twelve *months* ending with the *day* on which the communication is made, a statement in the following terms:

"I declare that I am a self-certified sophisticated investor for the purposes of the restriction on promotion of speculative illiquid securities. I understand that this means:

(i) I can receive promotional communications made by a person who is authorised by the Financial Conduct Authority which relate to investment activity in speculative illiquid securities;

(ii) the investments to which the promotions will relate may expose me to a significant risk of losing all of the property invested.

I am a self-certified sophisticated investor because at least one of the following applies:

(a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;

(b) I have made more than one investment in an unlisted company in the two years prior to the date below;

(c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;

(d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from someone who specialises in advising on speculative illiquid securities.

Signature:

Date: "

Definition of speculative illiquid security

4.14.20 R For the purposes of this section, and subject to ■ COBS 4.14.22R to ■ COBS 4.14.24R, a *speculative illiquid security* is a *debenture* or *preference share* which:

(1) has a denomination or minimum investment of less than £100,000 (or an equivalent amount as defined in ■ COBS 4.14.21R); and

(2) has been issued, or is to be issued, in circumstances where the issuer or a member of the *issuer's group* uses, will use or purports to use

some or all of the proceeds of the issue directly or indirectly for one or more of the following:

(a) the provision of loans or finance to any *person* other than a member of the *issuer's group*;

(b) buying or acquiring *specified investments* (whether they are to be held directly or indirectly);

(c) *buying* or acquiring *investments* other than *specified investments* (whether they are to be held directly or indirectly);

(d) *buying* real property or an interest in real property (whether it is to be held directly or indirectly);

(e) paying for or funding the construction of real property.

4.14.21 R For the purposes of ■ COBS 4.14.20R(1):

(1) an equivalent amount in relation to an amount denominated in any currency other than sterling is an amount of equal value denominated wholly or partly in another currency; and

(2) the equivalent amount is to be calculated at the latest practicable date before (but in any event not more than three *business days* before) the date of the issue of *debentures* or *preference shares*.

4.14.22 R A *debenture* or *preference share* that does not otherwise fall within ■ COBS 4.14.20R is not a *speculative illiquid security* by virtue only of the fact that the proceeds of the issue are used to buy or acquire *specified investments* as part of the ordinary cash management activities or treasury functions of an *issuer* (or its *group*) carrying on a general commercial or industrial purpose as defined in ■ COBS 4.14.24R(1).

4.14.23 R For the purposes of ■ COBS 4.14.20R, and notwithstanding the exemption for *readily realisable securities* in ■ COBS 4.14.24R(3)(d), a *debenture* is also a *speculative illiquid security* if:

(1) it meets the conditions set out in ■ COBS 4.14.20R; and

(2) it:

(a) is admitted to official listing on an exchange in the *United Kingdom* or an *EEA State*; and

(b) is not regularly traded on or under the rules of such an exchange; or

(3) it:

(a) is a newly issued *debenture* which can be reasonably expected to be admitted to official listing on an exchange in the *United Kingdom* or an *EEA State*; and

(b) cannot reasonably be expected to be regularly traded on or under the rules of such an exchange when it begins to be traded.

4.14.24 R A *debenture* or *preference share* is not a *speculative illiquid security* where one or more of the exemptions in (1), (3) or (4) below applies.

4

(1) This exemption applies where:

(a) the *issuer* or a member of the *issuer's group* uses the proceeds of the issue for the purpose of the activities in ■ COBS 4.14.20R(2)(c) (*buying* or acquiring *investments* other than *specified investments*), (d) (*buying* real property or an interest in real property) or (e) (paying for or funding the construction of real property); and

(b) the relevant property or *investment* is or will be used by the *issuer* or a member of the *issuer's group* for a general commercial or industrial purpose which it carries on.

(2) The exemption in (1) will not apply in respect of a *debenture* or *preference share* within ■ COBS 4.14.20R(2) (d) or ■ (e) if the ability of the *issuer* to pay in relation to the *debenture* or *preference share*:

(a) any *coupon* or other income; and/or

(b) capital at maturity

is wholly or predominantly linked to, contingent on, highly sensitive to or dependent on a return generated as a result of the matters referred to in ■ COBS 4.14.20R(2)(d) or ■ (e).

(3) This exemption applies where the *debenture* or *preference share* is:

(a) issued, or to be issued, by a *credit institution*;

(b) issued, or to be issued by an *investment trust*;

(c) a *non-mainstream pooled investment*;

(d) a *readily realisable security* except for a *debenture* within ■ COBS 4.14.23R; or

(e) a *P2P agreement*.

(4) This exemption applies where:

(a) the *issuer* is:

(i) a *property holding vehicle*; or

(ii) a *single-company holding vehicle*;

(b) any *financial promotions* made relating to the investment comply with ■ COBS 4.7.7R to ■ COBS 4.7.12G as appropriate; and

(c) any *financial promotion* made relating to a *single-company holding vehicle* clearly and prominently states which *single company* the investment relates to.

4.14.25 R

(1) For the purposes of ■ COBS 4.14.24R(1)(b), a general commercial or industrial purpose includes the following:

(a) a commercial activity, involving the purchase, sale and/or exchange of goods or commodities and/or the supply of services; or

(b) an industrial activity involving the production of goods; or

(c) a combination of (a) and (b).

(2) For the purposes of ■ COBS 4.14.24R(1)(b), a general commercial or industrial purpose does not include:

(a) investment to generate a pooled return;

(b) property development or construction services;

(c) hiring, leasing or rental services.

Guidance on general commercial or industrial purpose

4.14.26 G

(1) ■ COBS 4.14.20R provides that a *debenture* or *preference share* will fall within the definition of a *speculative illiquid security* where the proceeds of the issue are to be used by the *issuer* or a member of the *issuer's group* to fund various activities including *buying* or acquiring *investments* (other than *specified investments*) or the *buying* or construction of real property.

(2) However, ■ COBS 4.14.24R(1) provides an exemption in cases where the *investments* (other than *specified investments*) that are bought or acquired, or the property which is bought or constructed are or will be used by the *issuer* or a member of the *issuer's group* for a general commercial or industrial purpose which it carries on.

(3) General commercial or industrial purpose is defined in ■ COBS 4.14.25R.

(4) The effect of the exemption in ■ COBS 4.14.24R(1) is that a *debenture* or *preference share* will not be a *speculative illiquid security* where the proceeds of the issue are used by the *issuer* or a member of the *issuer's group* to buy or acquire *investments* (other than *specified investments*), or to buy or construct real property, and the relevant *investments* or property are or will be used by the *issuer* or *group* member for the purposes of its own commercial or industrial activities. This is illustrated in the examples in (5) and (6) below.

(5) In relation to ■ COBS 4.14.20R(2)(c) (buying or acquiring *investments* other than *specified investments*):

(a) where a *company* issues a *debenture* or *preference share* and uses the proceeds to purchase IT equipment for use in its business, to the extent that the IT equipment might be considered an *investment*, the *debenture* or *preference share* will benefit from the exemption because the IT equipment is used by the *company* for its own commercial activities (in this case, for use by its staff to provide services to customers);

(b) where a supermarket chain issues a *debenture* or *preference share* and uses the proceeds to purchase stock (for example wine) for sale as part of its retail business, to the extent that the wine might be considered an *investment*, the *debenture* or *preference share* will benefit from the exemption because the wine is used by the supermarket for its own commercial activities (in this case, to sell it on to its retail customers for a profit);

(c) where a *company* issues a *debenture* or *preference share* and uses the proceeds to buy or acquire art or fine wine as an investment, it will not benefit from the exemption because the art or fine wine will not be used by the *company* itself for its own commercial activities; if the art or fine wine is used to generate a pooled return, then the exemption would also not apply as a result of ■ COBS 4.14.25R(2)(a);

(d) where a *company* issues a *debenture* or *preference share* and uses the proceeds to purchase IT equipment for the purpose of hiring or leasing those out to another *company*, it will not benefit from the exemption because it is not using the IT

equipment for its own commercial activities and hiring and leasing services are excluded from the definition of general commercial or industrial purpose as a result of ■ COBS 4.14.25R(2)(c).

(6) In relation to ■ COBS 4.14.20R(2)(d) or ■ (e) (*buying* or constructing real property):

(a) where a retailer issues a *debenture* or *preference share* and uses the proceeds to build a shop, the *debenture* or *preference share* will benefit from the exemption because the property is used by the retailer for its own commercial activities (in this case, the sale of goods);

(b) where a property developer issues a *debenture* or *preference share* and uses the proceeds to fund the costs of a property development or construction of property, which is intended to be sold or rented out for commercial purposes or as residential dwellings, it will not benefit from the exemption because the development will not be used by the developer itself, and property development and construction services are excluded from the definition of general commercial or industrial purpose (see ■ COBS 4.14.25R(2)(b));

(c) where a *company* issues a *debenture* or *preference share* to fund the costs of constructing a power station which the *company* intends to operate itself with a view to selling the electricity it produces, the *debenture* or *preference share* will benefit from the exemption (unless ■ COBS 4.14.24R(2) applies). That is because it will use the property for its own commercial or industrial activities (generating electricity). However, firms and TP firms should also consider ■ COBS 4.14.24R(2) and the guidance in (7) below.

(7) ■ COBS 4.14.24R(2) provides that the general commercial or industrial purposes exemption does not apply where the ability of the issuer to pay the *coupon* or other income or to repay capital on maturity in relation to the *debenture* or *preference share* is wholly or predominantly linked to, contingent on, highly sensitive to or dependent on a return generated as a result of the matters referred to in ■ COBS 4.14.20R(2)(d) or ■ (e) (*buying* or construction of real property).

(8) The effect of the above is that where a *company* issues a *debenture* or *preference share* for the purpose of buying real property, an interest in real property or funding the construction of a particular project and the *company's* ability to pay interest on the *debenture* or *preference share* or repay capital depends on the success of that purchase or project, the exemption in ■ COBS 4.14.24R(1) will not apply. In those circumstances, the *debenture* or *preference share* will be a *speculative illiquid security* unless one of the other exemptions in ■ COBS 4.14.24R applies.

Chapter 5

Distance communications

5.1 The distance marketing disclosure rules

Application

5.1.-1 R

(1) This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom*.

(2) If a *firm* is an intermediary rather than the supplier under the *distance contract*, references to '*firm*' in ■ COBS 5 Annex 1 R and ■ COBS 5 Annex 2 R are to be interpreted as referring to the supplier except for references to '*firm*' in ■ COBS 5 Annex 1 R (2), (4) and (18).

The distance marketing disclosure rules

5.1.1 R

A *firm* must provide a *consumer* with the distance marketing information (■ COBS 5 Annex 1R) in good time before the *consumer* is bound by a *distance contract* or offer.

[**Note:** article 3(1) of the *Distance Marketing Directive*]

5.1.2 R

A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[**Note:** article 3(2) of the *Distance Marketing Directive*]

5.1.3 R

When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

[**Note:** article 3(3)(a) of the *Distance Marketing Directive*]

Exception: contracts for payment services

5.1.4 R

A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[**Note:** article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

5.1.5 R A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* (■ COBS 5.1.1 R to ■ COBS 5.1.4 R) on a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** article 5(1) of the *Distance Marketing Directive*]

5.1.6 G A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Exception: distance contract as a stage in the provision of another service

5.1.7 R This section does not apply to a *distance contract* to deal as agent, advise or arrange, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[**Note:** recital 19 to the *Distance Marketing Directive*]

Exception: successive operations

5.1.8 R In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

[**Note:** article 1(2) of the *Distance Marketing Directive*]

5.1.9 R If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (■ COBS 5.1.1 R to ■ COBS 5.1.4 R) will only apply:

(1) when the first operation is performed; and

(2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[**Note:** recital 16 and article 1(2) of the *Distance Marketing Directive*]

5.1.10 G In this section:

(1) 'initial service agreement' includes the opening of a bank account and the concluding of a portfolio management contract;

(2) 'operations' includes transactions made within the framework of a portfolio management contract; and

(3) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with one's existing bank account, does not constitute an 'operation' but an additional contract to which the *rules* in this section apply. The

subscription to new *units* of the same *fund* is considered to be one of 'successive operations of the same nature'.

[**Note:** recital 17 of the *Distance Marketing Directive*]

5.1.11 G In the *FCA's* view, other examples of:

(1) 'initial service agreement' include:

(a) subscribing to an *investment trust savings scheme*; or

(b) concluding a *life policy*, *personal pension scheme* or *stakeholder pension scheme* that includes a pre-selected option providing for future increases or decreases in regular *premiums* or payments; and

(2) 'operations' include:

(a) successive purchases or sales of *shares* under an *investment trust savings scheme*; and

(b) subsequent index-linked changes to premiums or increases or decreases to pension contributions following fluctuations in salary.

Exception: voice telephony communications

5.1.12 R In the case of a voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (■ COBS 5 Annex 2R) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information (■ COBS 5 Annex 1R) on a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

[**Note:** articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

Exception: means of distance communication not enabling disclosure

5.1.13 R A *firm* may provide the distance marketing information (■ COBS 5 Annex 1R) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** article 5(2) of the *Distance Marketing Directive*]

Exception: contracts for payment services

5.1.13A R Where a *distance contract* is also a contract for *payment services* to which the *Payment Services Regulations* apply, a *firm* is required to provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of ■ COBS 5 Annex 1 R.

[**Note:** article 4(5) of the *Distance Marketing Directive*]

5.1.13B G Where a *distance contract* covers both *payment services* and non-*payment services*, this exception applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 6 of the *Payment Services Regulations*.

Distance marketing: other provisions

5.1.14 R If, at any time during the contractual relationship, a *consumer* that is a party to a *distance contract* asks a *firm*:

(1) for a paper copy of the terms and conditions of that contract; or

(2) to change the means of distance communication used;

the *firm* must provide that paper copy or change the means of distance communication used, unless (in the latter case) that would be incompatible with the contract or the nature of the service provided.

[**Note:** article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

5.1.15 R

(1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of reply not constituting consent.

(2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[**Note:** article 9 of the *Distance Marketing Directive*]

Mandatory nature of consumer's rights

5.1.16 R If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[**Note:** article 12 of the *Distance Marketing Directive*]

5

5.1.17 **R** If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *United Kingdom*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of the *United Kingdom*.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

5.2 E-Commerce

Application

5.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom*.

Information about the firm and its products or services

5.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

(1) its name;

(2) the geographic address at which it is established;

(3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;

(4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R or ■ GEN 4 Annex 1A R as appropriate), together with a statement which explains that it is on the *Financial Services Register* and includes its Firm Reference Number;

(5) if it is a *professional firm*:

(a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;

(b) the professional title;

(c) a reference to the applicable professional rules and the means to access them; and

(6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

5.2.3 R If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[**Note:** article 5(2) of the *E-Commerce Directive*]

5

5.2.4 R A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

(1) the commercial communication must be clearly identifiable as such;

(2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;

(3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and

(4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[**Note:** article 6 of the *E-Commerce Directive*]

5.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

5.2.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):

(1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:

(a) the different technical steps to follow to conclude the contract;

(b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;

(c) the technical means for identifying and correcting input errors prior to the placing of the order; and

(d) the languages offered for the conclusion of the contract;

(2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;

(3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means; and

(4) make available to an *ECA recipient*, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[**Note:** articles 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

5.2.7 R For the purposes of ■ COBS 5.2.6 R (3), an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

[**Note:** article 11(1) of the *E-Commerce Directive*]

5.2.8 R Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

5.2.9 R The requirements relating to the placing and receipt of orders (■ COBS 5.2.6 R) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** article 10(4) and 11(3) of the *E-Commerce Directive*]

Distance marketing information

This Annex belongs to ■ COBS 5.1.1 R (The distance marketing disclosure rules)

Information about the firm	
(1)	The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
(2)	Where the *firm* has a representative established in the *United Kingdom*; , the name of that representative and the geographical address relevant for the *consumer's* relations with that representative.
(3)	Where the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant to the *consumer's* relations with that professional.
(4)	An appropriate statutory status disclosure statement (GEN 4), a statement that the *firm* is on the *Financial Services Register* and its *FCA* registration number.
Information about the financial service	
(5)	A description of the main characteristics of the service the *firm* will provide.
(6)	The total price to be paid by the *consumer* to the *firm* for the financial service, including all related fees, charges and expenses, and all taxes paid through the *firm* or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
(7)	Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the *firm's* control and that past performance is no indicator of future performance.
(8)	Notice of the possibility that other taxes or costs may exist that are not paid via the *firm* or imposed by it.
(9)	Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a *firm's* offer applies as it stands.
(10)	The arrangements for payment and performance.

(11)	Details of any specific additional cost to the *consumer* for using a means of distance communication.
Information about the contract	
(12)	The existence or absence of a right to cancel or withdraw under the cancellation rules (COBS 15) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those *rules*, as well as the consequences of not exercising the right to cancel or withdraw.
(13)	The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
(14)	Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
(15)	Practical instructions for exercising any right to cancel or withdraw, including the address to which any cancellation or withdrawal notice should be sent.
(16)	[deleted]
(17)	Any contractual clause on the law applicable to the contract or on the competent court, or both.
(18)	In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.
Information about redress	
(19)	How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.
(20)	Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities.

[**Note:** Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]

Abbreviated distance marketing disclosure

This Annex belongs to ■ COBS 5.1.12 R

(1)	The identity of the *person* in contact with the *consumer* and his link with the *firm*.
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the *consumer* to the *firm* for the financial service including all taxes paid via the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
(4)	Notice of the possibility that other taxes and/or costs may exist that are not paid via the *firm* or imposed by him.
(5)	The existence or absence of a right to cancel or withdraw in accordance with the cancellation rules (COBS 15) and, where the right to cancel or withdraw exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay on the basis of the cancellation rules.
(6)	That other information is available on request and what the nature of that information is. [**Note:** article 3(3)(b) of the *Distance Marketing Directive*]

Chapter 6

Information about the firm, its services and remuneration

6.1 Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)

Application

6.1.1 R

(1) This section applies to a *firm* that carries on *designated investment business*, other than *MiFID, equivalent third country or optional exemption business* or *insurance distribution activities*, for a *retail client*.

(2) [deleted]

6.1.2 R

If a *firm* provides *basic advice on stakeholder products* in accordance with the *basic advice rules*, this section does not apply to that service.

6.1.3 G

This section imposes requirements relating to disclosure of information to *clients* that are additional to the general requirement in ■ COBS 2.2.

Information about a firm and its services

6.1.4 R

A *firm* must provide a *client* with the following general information, if relevant:

(1) the name and address of the *firm*, and the contact details necessary to enable a *client* to communicate effectively with the *firm*;

(2) [deleted]

(3) the methods of communication to be used between the *firm* and the *client* including, where relevant, those for the sending and reception of orders;

(4) a statement of the fact that the *firm* is authorised by the *FCA* or the *PRA*, as applicable;

(5) [deleted]

(6) if the *firm* is acting through an *appointed representative*, a statement of this fact

(7) the nature, frequency and timing of the reports on the performance of the service to be provided by the *firm* to the *client* in accordance with the *rules* on reporting to *clients* on the provision of services (■ COBS 16);

(8) (a) in the case of a *common platform firm*, a description, which may be provided in summary form, of the *conflicts of interest policy*;

(b) other than in the case of a *common platform firm*, when a *material interest* or conflict of interest may or does arise, the manner in which the *firm* will ensure fair treatment of the *client*;

(9) in the case of a *common platform firm*, at any time that the *client* requests it, further details of the *conflicts of interest policy*.

6.1.5 G A *firm* disclosing details of its authorisation should refer to the appropriate forms of words set out in ■ GEN 4 Annex 1 R or ■ GEN 4 Annex 1A R as appropriate.

6.1.6 R

(1) A *firm* that *manages investments* for a *client* must establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the *client* and the types of *designated investments* included in the *client* portfolio, so as to enable the *client* to assess the *firm's* performance.

(2) If a *firm* proposes to *manage investments* for a *client*, the *firm* must provide the *client* with such of the following information as is applicable:

(a) information on the method and frequency of valuation of the *designated investments* in the *client* portfolio;

(b) details of any delegation of the discretionary management of all or part of the *designated investments* or funds in the *client* portfolio;

(c) a specification of any benchmark against which the performance of the *client* portfolio will be compared;

(d) the types of *designated investments* that may be included in the *client* portfolio and types of transaction that may be carried out in those *designated investments*, including any limits; and

(e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

Information concerning safeguarding of designated investments belonging to clients and client money

6.1.7 R

(1) A *firm* that holds *designated investments* or *client money* for a *client* subject to the *custody chapter* or the *client money chapter* must provide that *client* with the following information:

(a) if applicable,

(i) that the *designated investments* or *client money* of that *client* may be held by a third party on behalf of the *firm*;

(ii) the responsibility of the *firm* under the applicable national law for any acts or omissions of the third party; and

(iii) the consequences for the *client* of the insolvency of the third party;

(b) if applicable, that the *designated investments* belonging to the *client* may be held in an omnibus account by a third party and a prominent warning of the resulting risks;

(c) if it is not possible under national law for *designated investments* belonging to a *client* held with a third party to be separately

identifiable from the proprietary *designated investments* of that third party or of the *firm*, that fact and a prominent warning of the resulting risks;

(d) if applicable, that accounts that contain *designated investments* or *client money* belonging to that *client* are or will be subject to the law of a jurisdiction other than that of the *United Kingdom*, an indication that the rights of the *client* relating to those instruments or money may differ accordingly;

(e) a summary description of the steps which it takes to ensure the protection of any *designated investments* belonging to the *client* or *client money* it holds, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the *firm* by virtue of its activities in the *United Kingdom*.

(2) A *firm* that holds *designated investments* or *client money* for a *client* must inform the client:

(a) if applicable, about the existence and the terms of any security interest or lien which the *firm* has or may have over the *client's designated investments* or *client money*, or any right of set-off it holds in relation to the *client's designated investments* or *client money*; and

(b) if applicable, that a depositary may have a security interest or lien over, or right of set-off in relation to those instruments or money.

(3) A *firm* within (1) must also, before entering into *securities financing transactions* in relation to *designated investments* held by it on behalf of a *client*, or before otherwise using such *designated investments* for its own account or the account of another *client*, in good time before the use of those *designated investments* provide the *client*, in a *durable medium*, with clear, full and accurate information on the obligations and responsibilities of the *firm* with respect to the use of those *designated investments*, including the terms for their restitution, and on the risks involved.

(4) [deleted]

6.1.7A G *Firms* subject to either or both the *custody rules* and the *client money rules* are reminded of the information requirements concerning *custody assets* and *client money* in ■ CASS 9.3 (Prime brokerage agreement disclosure annex) and ■ CASS 9.4 (Information to clients concerning custody assets and client money).

6.1.8 G [deleted]

Information about costs and associated charges

6.1.9 R A *firm* must provide a *client* with information on costs and associated charges including, if applicable:

(1) the total price to be paid by the *client* in connection with the *designated investment* or the *designated investment business*,including all related fees, commissions, charges and expenses, and all taxes payable via the *firm* or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the *client* can verify it. The commissions charged by the *firm* must be itemised separately in every case;

(2) if any part of the total price referred to (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

(3) notice of the possibility that other costs, including taxes, related to transactions in connection with the *designated investment* or the *designated investment business* may arise for the *client* that are not paid via the *firm* or imposed by it; and

(4) the arrangements for payment or other performance.

6.1.10 G The *rules* on inducements in ■ COBS 2.3 may also require a *firm* to disclose information to a *client* in relation to benefits provided to the *firm*.

Timing of disclosure

6.1.11 R

(1) A *firm* must provide a *client* with the information required by this section in good time before the provision of *designated investment business* unless otherwise provided by this *rule*.

(2) A *firm* may instead provide that information immediately after starting to provide *designated investment business* if:

(a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from doing so; and

(b) in any case where the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *client*, as if that *client* were a *consumer*.

6.1.12 G A *firm* should take into account ■ COBS 8.1.3 R (1), which requires earlier disclosure of some items of information covered in this section.

Medium of disclosure

6.1.13 R Except where expressly provided, a *firm* must provide the information required by this section in a *durable medium* or via a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.

Keeping the client up to date

6.1.14 R

(1) A *firm* must notify a *client* in good time about any material change to the information provided under this section which is relevant to a service that the *firm* is providing to that *client*.

(2) A *firm* must provide this notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

Existing clients

6.1.15 G

(1) A *firm* need not treat each of several transactions in respect of the same type of *financial instrument* as a new or different service and so does not need to comply with the disclosure *rules* in this chapter in relation to each transaction.

(2) But a *firm* should ensure that the *client* has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.

Compensation information

6.1.16 R

(1) A *firm* must make available to a *client*, who has used or intends to use the *firm's* services, information necessary for the identification of the *compensation scheme* if the *firm* is a *participant firm*.

(2) The information under (1) must include the amount and scope of the cover offered by the *compensation scheme*.

(3) A *firm* must provide, on the *client's* request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

(4) The information provided for in this *rule* must be made available in a *durable medium* or via a website if the *website conditions* are satisfied in the official language or languages of the *United Kingdom*.

[**Note:** article 10(1) and (2) of the *Investor Compensation Directive*]

Record keeping: information about the firm and compensation information

6.1.17 G *Firms* are reminded of the general record-keeping requirements in ■ SYSC 3.2 and ■ SYSC 9.

6.1ZA Information about the firm and compensation information (MiFID and insurance distribution provisions)

Application

6.1ZA.1 R

(1) Subject to (2) and (3), this section applies to a *firm*:

(a) in relation to its *MiFID, equivalent third country or optional exemption business*; and

(b) carrying on *insurance distribution activities*.

(2) ■ COBS 6.1ZA.16R does not apply to a *firm* in respect of its *MiFID optional exemption business*.

(3) Where a *firm* is carrying on *insurance distribution activities* for a *professional client* only those *rules* which implemented the requirements of the *IDD* apply.

6.1ZA.1A G

For the purposes of ■ COBS 6.1ZA.1R(3) if a *rule* implemented a requirement of the *IDD*, a note (“**Note:**”) follows the *rule* indicating which provision was being implemented.

6.1ZA.2 G

This section imposes requirements relating to disclosure of information to *clients* that are additional to the general requirements in ■ COBS 2.2A.

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

6.1ZA.3 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).

6.1ZA.4 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*.

[**Note:** ESMA has issued guidelines under article 16(3) of the ESMA Regulation on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN).]

Information about a firm and its services: MiFID business

6.1ZA.5 UK

47(1) Investment firms shall provide clients or potential clients with the following general information, where relevant:

(a) the name and address of the investment firm, and the contact details necessary to enable clients to communicate effectively with the firm;

(b) the languages in which the client may communicate with the investment firm, and receive documents and other information from the firm;

(c) the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;

(d) a statement of the fact that the investment firm is authorised and the name and contact address of the competent authority that has authorised it;

(e)where the investment firm is acting through a tied agent, a statement of this fact;

(f)the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with [■ COBS 9A.3.2R and ■ COBS 16A.2.1R];

(g)where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in the *United Kingdom*;

(h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm in accordance with Article 34;

(i) at the request of the client, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions set out Article 3(2) are satisfied.

The information listed in points (a) to (i) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.

[**Note:** article 47(1) of the *MiFID Org Regulation*]

6.1ZA.6 G

[deleted]

6.1ZA.7 G

A *firm* disclosing details of its authorisation should refer to the appropriate form of words set out in ■ GEN 4 Annex 1R or ■ GEN 4 Annex 1AR as appropriate.

Information about a firm and its services: insurance distribution

6.1ZA.7A R A *firm* carrying on *insurance distribution activities* must provide a *retail client* with the following general information, if relevant:

(1) the name and address of the *firm*, and the contact details necessary to enable a *client* to communicate effectively with the *firm*;

(2) the methods of communication to be used between the *firm* and the *client* including, where relevant, those for the sending and reception of orders;

(3) a statement of the fact that the *firm* is authorised and the name of the *competent authority* that has authorised it;

(4) if the *firm* is acting through an *appointed representative* a statement of this fact;

(5) the nature, frequency and timing of the reports on the performance of the service to be provided by the *firm* to the *client* in accordance with the *rules* on reporting to *clients* on the provision of services (■ COBS 16 or ■ COBS 16A in relation to an *insurance-based investment product*);

(6) (a) a description, which may be provided in summary form, of (as applicable) the *conflicts of interest policy*, SYSC 3.3.1UK (applied by ■ SYSC 3.3.3R) or the policy required by article 4(1) of the *IDD Regulation*; and

(b) if not included in the information provided under (a), when a *material interest* or conflict of interest may or does arise, the manner in which the *firm* will ensure fair treatment of the *client*;

(7) at any time that the *client* requests it, further details of the *conflicts of interest policy*.

The timing of these disclosures is governed by ■ COBS 6.1ZA.19AR.

Status disclosure general information: insurance distribution

6.1ZA.7B R In good time before the conclusion of a *life policy* and, if necessary, on its amendment:

(1) a *firm* must provide the *client* with at least the following information:

(a) its identity, address and whether it is an *insurance intermediary* or an *insurance undertaking*;

(b) whether it provides a *personal recommendation* about the insurance products offered;

(c) the procedures allowing *clients* and other interested parties to register *complaints* about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *clients*; and

(2) an *insurance intermediary* must also provide the *client* with the following information:

(a) the fact that it is included in the *Financial Services Register* (or if it is not on the *Financial Services Register*, the register in which it has been included) and the means for verifying this;

(b) whether it has a direct or indirect holding representing 10% or more of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);

(c) whether a given *insurance undertaking* (that is not a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*; and

(d) whether it is representing the *client* or is acting for and on behalf of the *insurer*.

[**Note:** articles 18 and 19(1)(a) and (b) of the *IDD*]

6.1ZA.7C R Where an *insurance intermediary* proposes or advises on a *life policy*, in good time before the conclusion of a *life policy* and, if necessary, on its amendment, an *insurance intermediary* must provide the *client* with at least information on whether the *firm*:

(1) gives a *personal recommendation* on the basis of a fair and personal analysis; or

(2) is under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings*, in which case it must provide the names of those *insurance undertakings*; or

(3) is not under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings*; and

does not give a *personal recommendation* on the basis of a fair and personal analysis,

in which case it must provide its *client* with the name of those *insurance undertakings* with which the *insurance intermediary* may and does conduct business.

[**Note:** article 19(1)(c) of the *IDD*]

6.1ZA.7D R If an *insurance intermediary* informs a *client* that it gives a *personal recommendation* on the basis of a fair and personal analysis, it must give that *personal recommendation* on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a *personal recommendation* in accordance with professional criteria, regarding which *life policy* would be adequate to meet the *client's* needs.

[**Note:** article 20(3) of the *IDD*]

Information about a firm's portfolio management service: MiFID business

6.1ZA.8 UK 47(2) When providing the service of portfolio management, investment firms shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm's performance.

47(3) Where investment firms propose to provide portfolio management services to a client or potential client, they shall provide the client, in addition to the information required under paragraph 1, with such of the following information as is applicable:

(a) information on the method and frequency of valuation of the financial instruments in the client portfolio;

(b) details of any delegation of the discretionary management of all or part of the financial instruments or funds in the client portfolio;

(c) a specification of any benchmark against which the performance of the client portfolio will be compared;

(d) the types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits;

(e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

The information listed in points (a) to (e) shall be provided in good time before the provision of investment services or ancillary services to clients or potential clients.

[**Note:** articles 47(2) and (3) of the *MiFID Org Regulation*]

Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business

6.1ZA.9 UK

49(1) Investment firms holding financial instruments or funds belonging to clients shall provide those clients or potential clients with the information specified in paragraphs 2 to 7 where relevant.

49(2) The investment firm shall inform the client or potential client where the financial instruments or funds of that client may be held by a third party on behalf of the investment firm and of the responsibility of the investment firm under the applicable national law for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.

49(3) Where financial instruments of the client or potential client may, if permitted by national law, be held in an omnibus account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks.

49(4) The investment firm shall inform the client or potential client where it is not possible under national law for client financial instruments held with a third party to be separately identifiable from the proprietary financial instruments of that third party or of the investment firm and shall provide a prominent warning of the resulting risks.

49(5)The investment firm shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of the United Kingdom and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly.

49(6) An investment firm shall inform the client about the existence and the terms of any security interest or lien which the firm has or may have over the

client's financial instruments or funds, or any right of set-off it holds in relation to those instruments or funds. Where applicable, it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or funds.

49(7) An investment firm, before entering into securities financing transactions in relation to financial instruments held by it on behalf of a client, or before otherwise using such financial instruments for its own account or the account of another client shall in good time before the use of those instruments provide the client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and on the risks involved.

[**Note:** article 49 of the *MiFID Org Regulation*]

6.1ZA.10 G *Firms* subject to either or both the *custody rules* and the *client money rules* are reminded of the information requirements concerning *custody assets* and *client money* in ■ CASS 9.3 (Prime brokerage agreement disclosure annex) and ■ CASS 9.4 (Information to clients concerning custody assets and client money).

Information concerning safeguarding of client money: insurance distribution

6.1ZA.10A R

(1) Where a *firm* doing *insurance distribution* activities holds *client money* for a *retail client* and has elected to comply with the *client money chapter*, it must provide that *client* with the information specified in:

(a) ■ COBS 6.1.7R; or

(b) (if it is a *firm* doing *MiFID, equivalent third country or optional exemption business*) ■ COBS 6.1ZA.9UK and ■ COBS 6.1.7R(1)(e);

in relation to that *client money*.

(2) For the purposes of ■ COBS 6.1ZA.10AR(1)(b), ■ COBS 1.2.3R applies except 'funds' should be read as meaning *client money* that a *firm* receives or holds for, or on behalf of, a *client* in the course of, or in connection with, its *insurance distribution activities*.

(3) The timing of this disclosure is governed by ■ COBS 6.1ZA.19AR.

Information about costs and associated charges: MiFID and insurance distribution

6.1ZA.11 R A *firm* must provide a *client* with at least the following information about all costs and related charges (see also ■ COBS 2.2A.2R):

(1) (as applicable) information relating to:

(a) both *investment services* and *ancillary services*; and

(b) the distribution of an *insurance-based investment product*;

(2) where relevant, the cost of any *investment advice*;

(3) the cost of the *financial instrument* or *insurance-based investment product* recommended or marketed to the *client*;

(4) information on how the *client* may pay; and

(5) details of any third party payments.

[**Note:** article 24(4)(c) of *MiFID*, article 29(1)(c) of the *IDD*]

6.1ZA.12 R

(1) A *firm* must aggregate the information about costs and charges required by ■ COBS 2.2A.2R and ■ COBS 6.1ZA.11R, where those costs and charges are not caused by the occurrence of underlying market risk. This is to allow the *client* to understand the overall cost, and the cumulative effect on the return, of the investment.

(2) A *firm* must provide the *client* with an itemised breakdown of the costs and charges information required by (1) and ■ COBS 6.1ZA.11R when requested by the *client*.

(3) The information must, where applicable, be provided to the *client* on a regular basis, and at least annually, during the life of the investment.

[**Note:** article 24(4) of *MiFID*, second paragraph of article 29(1) of the *IDD*]

6.1ZA.13 R

(1) A *firm* must provide the information required by ■ COBS 6.1ZA.11R and ■ COBS 6.1ZA.12R in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* or *insurance-based investment product* that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

[**Note:** article 24(5) of *MiFID*, third paragraph of article 29(1) of the *IDD*]

Costs and associated charges disclosure: MiFID

6.1ZA.14 UK

50(1) For the purposes of providing information to clients on all costs and charges pursuant to [■ COBS 6.1ZA.11R] ("the relevant rule"), investment firms shall comply with the detailed requirements in paragraphs 2 to 10.

50(1A)

(1)Subject to subparagraph (2), the requirements laid down in the relevant rule do not apply to services provided to professional clients.

(2)The requirements laid down in the relevant rule do apply to services provided to professional clients for investment advice and portfolio management.

50(2) For ex-ante and ex-post disclosure of information on costs and charges to clients, investment firms shall aggregate the following:

(a) all costs and associated charges charged by the investment firm or other parties where the client has been directed to such other

parties, for the investment services(s) and/or ancillary services provided to the client; and

(b) all costs and associated charges associated with the manufacturing and managing of the financial instruments.

Costs referred to in points (a) and (b) are listed in Annex II to this Regulation. For the purposes of point (a), third party payments received by investment firms in connection with the investment service provided to a client shall be itemised separately and the aggregated costs and charges shall be totalled and expressed both as a cash amount and as a percentage

50(3) Where any part of the total costs and charges is to be paid in or represents an amount of foreign currency, investment firms shall provide an indication of the currency involved and the applicable currency conversion rates and costs. Investments firms shall also inform about the arrangements for payment or other performance.

50(4) In relation to the disclosure of product costs and charges that are not included in the UCITS KIID, the investment firms shall calculate and disclose these costs, for example, by liaising with UCITS management companies to obtain the relevant information.

50(5)The obligation to provide in good time a full ex-ante disclosure of information about the aggregated costs and charges related to the financial instrument and to the investment or ancillary service provided shall apply to investment firms in the following situations:

(a) where the investment firm recommends or markets financial instruments to clients; or

(b)where the investment firm providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments.

50(6)Investment firms that do not recommend or market a financial instrument to the client or are not obliged to provide the client with a KID/KIID shall inform their clients about all costs and charges relating to the investment and/or ancillary service provided.

50(7) Where more than one investment firm provides investment or ancillary services to the client, each investment firm shall provide information about the costs of the investment or ancillary services it provides. An investment firm that recommends or markets to its clients the services provided by another firm, shall aggregate the cost and charges of its services together with the cost and charges of the services provided by the other firm. An investment firm shall take into account the costs and charges associated to the provision of other investment or ancillary services by other firms where it has directed the client to these other firms.

50(8) Where calculating costs and charges on an ex-ante basis, investment firms shall use actually incurred costs as a proxy for the expected costs and charges. Where actual costs are not available, the investment firm shall make reasonable estimations of these costs. Investment firms shall review ex-ante assumptions based on the ex-post experience and shall make adjustment to these assumptions, where necessary.

50(9) Investment firms shall provide annual ex-post information about all costs and charges related to both the financial instrument(s) and investment and ancillary service(s) where they have recommended or marketed the financial instrument(s) or where they have provided the client with the KID/KIID in relation to the financial instrument(s) and they have or have had an

ongoing relationship with the client during the year. Such information shall be based on costs incurred and shall be provided on a personalised basis.

Investment firms may choose to provide such aggregated information on costs and charges of the investment services and the financial instruments together with any existing periodic reporting to clients.

(a) the illustration shows the effect of the overall costs and charges on the return of the investment;

(b) the illustration shows any anticipated spikes or fluctuations in the costs; and

(c) the illustration is accompanied by a description of the illustration.

[**Note:** article 50 of the *MiFID Org Regulation*]

6.1ZA.15 G The *rules* on inducements in ■ COBS 2.3A may also require a firm to disclose information to a *client* in relation to the benefits provided to a *firm*.

Costs and associated charges disclosure: insurance distribution

6.1ZA.15A R In addition to the information specified by ■ COBS 2.2A.2R and ■ COBS 6.1ZA.11R, a *firm* carrying on *insurance distribution activities* must provide a *retail client* with the following information on costs and associated charges, if applicable:

(1) the total price to be paid by the *client* in connection with the *life policy* or the *insurance distribution activity*, including all related fees, commissions, charges and expenses, and all taxes payable via the *firm* or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the *client* can verify it. The commissions charged by the *firm* must be itemised separately in every case;

(2) if any part of the total price referred to in (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

(3) notice of the possibility that other costs, including taxes, related to transactions in connection with the *life policy* or the *insurance distribution activity* may arise for the *client* that are not paid via the *firm* or imposed by it; and

(4) the arrangements for payment or other performance.

The timing of this disclosure is governed by ■ COBS 6.1ZA.19AR.

Remuneration received by firm disclosure: insurance intermediaries

6.1ZA.15B R In good time before the conclusion of the *life policy* and, if necessary, on its amendment, an *insurance intermediary* must provide the *client* with information:

(1) on the nature of the *remuneration* received in relation to the *life policy*;

(2) about whether in relation to the *life policy* it works on the basis of:

(a) a *fee*, that is *remuneration* paid directly by the *client*; or

(b) a *commission* of any kind, that is the *remuneration* included in the *premium*; or

(c) any other type of *remuneration*, including an economic benefit of any kind offered or given in connection with the contract; or

(d) on the basis of a combination of any type of *remuneration* set out above in (a), (b) and (c).

[**Note:** article 19(1)(d) and (e) of the *IDD*]

Remuneration of employees disclosure: insurers

6.1ZA.15C R In good time before the conclusion of a *life policy* an *insurance undertaking* must provide its *client* with information on the nature of the *remuneration* received by its *employees* in relation to the *life policy*.

[**Note:** article 19(4) of the *IDD*]

General remuneration disclosure: insurance distributors

6.1ZA.15D R The *remuneration* referred to in this section includes *remuneration* that is not guaranteed or which is contingent on meeting certain targets.

6.1ZA.15E G The information required to be disclosed by ■ COBS 6.1ZA.15BR and ■ COBS 6.1ZA.15CR includes the type of the *remuneration* and, taking into account the clear, fair and not misleading *rule* (■ COBS 4.2.1R), should also include the source of the *remuneration*.

6.1ZA.15F G When considering what information to provide about the *remuneration*, a *firm* should include all *remuneration* which the *insurance intermediary* or the *employee* of an *insurance undertaking*, receives or may receive in relation to the distribution of the *life policy*. This includes *remuneration*:

(1) provided indirectly by the *insurer* or another *firm* within the distribution chain; or

(2) provided by way of a bonus (whether financial or non-financial) paid to the *firm* by the *insurer* or another *firm*, or provided by the *firm* to its *employees*, where this bonus is contingent on the achievement of a target to which the distribution of the particular *life policy* could contribute. For example, this can include cash bonuses paid for achieving a sales target and additional annual leave for achieving a high customer service score on sales calls, profit share arrangements, overriders or other enhanced commissions.

6.1ZA.15G R If any payments, other than ongoing *premiums* and scheduled payments, are made by the *client* under the *life policy* after its conclusion, a *firm* must make the disclosures required by ■ COBS 6.1ZA.15BR or ■ COBS 6.1ZA.15CR, for each such payment.

[**Note:** articles 19(3) and (5) of the *IDD*]

6.1ZA.15H G Examples of the type of payments made are those for mid-term adjustments, administration fees and cancellation fees.

Insurance distributors fee disclosure: additional requirements

6.1ZA.15I R

(1) Where a *fee* is payable in relation to a *life policy*, the *firm* must inform its *client* of the amount of the *fee*.

(2) The information in (1) must be given before the *client* incurs liability to pay the *fee*, or before conclusion of the *life policy*, whichever is earlier.

(3) To the extent that it is not possible for an amount to be given, a *firm* must give the basis for its calculation.

[**Note:** articles 19(2) and (5) of the *IDD*]

6.1ZA.15J R The *fee* disclosure requirement extends to all such *fees* that may be charged during the life of a *policy*.

[**Note:** article 19(3) of the *IDD*]

Information about costs and charges of different services or products: MiFID business

6.1ZA.16 R

(1) This *rule* applies to a *firm* that offers an *investment service* with another service or product or as part of a package or as a condition of the same agreement or package.

(2) The *firm* must inform the *client* whether it is possible to buy the different components separately and must provide information on the costs and charges of each component.

(3) If the agreement or package is offered to a *retail client*, the *firm* must:

(a) inform that *retail client* if the risks resulting from the agreement or package are likely to be different from the risks associated with the components when taken separately; and

(b) provide that *retail client* with an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.

[**Note:** article 24(11) of *MiFID*]

Cross selling requirements where insurance is the primary product

6.1ZA.16A R When offering a non-insurance ancillary product or service as part of a package or the same agreement with a *life policy*, a *firm* must:

(1) inform the *client* whether it is possible to buy the different components separately and, if so, must provide the *client* with an adequate description of:

(ba) the different components;

(b) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with the components taken separately; and

(2) provide the *client* with separate evidence of the costs and charges of each component.

[**Note:** article 24(1) and (2) of the *IDD*]

Cross selling requirements where insurance is the ancillary product

6.1ZA.16B R When offering a *life policy* ancillary to and as part of a package or in the same agreement with a non-insurance product or service, a *firm* must offer the *client* the option of buying the non-insurance goods or services separately.

6.1ZA.16C R ■ COBS 6.1ZA.16BR does not apply where the non-insurance product or service is any of the following:

(1) investment services or activities; or

(2) a credit agreement as defined in point 3 of article 4 of the *MCD* which is:

an *MCD credit agreement*; or

an *exempt MCD credit agreement*; or

a *CBTL credit agreement*; or

a credit agreement referred to in articles 72G(3B) and (4) of the *Regulated Activities Order*; or

(3) a payment account as defined in regulation 2(1) of the *Payment Accounts Regulations*.

[**Note:** article 24(3) of the *IDD*]

6.1ZA.16D R ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16CR do not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

[**Note:** article 24(5) of the *IDD*]

6.1ZA.16E G In addition to the rules in ■ COBS 6.1ZA.16AR and ■ 6.1ZA.16BR *firms* should still comply with the other *rules* in *COBS* relating to the offer and sale of insurance products that form part of the package or agreement, such as ■ COBS 2.5 (Optional additional products).

[**Note:** article 24(6) of the *IDD*]

Timing of disclosure: MiFID business

6.1ZA.17 UK 46(2) Subject to paragraph 2A, investment firms must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

46(2A)Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion:

(a)the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and

(b)subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:

(i)electronic format; or

(ii)where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.

46(2B)The conditions referred to in paragraph 2A(b) are:

(a)the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and

(b)the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.

[**Note:** article 46(2), (2A) and (2B) of the *MiFID Org Regulation*]

6.1ZA.18 G The following provisions of *COBS* reproduce the information requirements contained in Articles 47 to 50 of the *MiFID Org Regulation*: ■ COBS 6.1ZA.5UK, ■ COBS 6.1ZA.8UK, ■ COBS 6.1ZA.9UK, ■ COBS 6.1ZA.14UK, and ■ COBS 14.3A.5UK.

Medium of disclosure: MiFID business

6.1ZA.19 UK 46(3) The information referred to in paragraphs 1 to 2B shall be provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

[**Note:** article 46(3) of the *MiFID Org Regulation*]

Timing of disclosure: specified rules for insurance distribution

6.1ZA.19A R (1) A *firm* must provide a *client* with the information required by ■ COBS 6.1ZA.7AR, ■ COBS 6.1ZA.10AR and ■ COBS 6.1ZA.15AR in good time before the provision of the *insurance distribution activity* concerned unless otherwise provided by this *rule*.

(2) A *firm* may instead provide that information immediately after starting to provide the *insurance distribution activity* concerned if:

(a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from doing so; and

(b) in any case where the *rule* on voice telephony communications (■ COBS 5.1.12R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if that *client* were a *consumer*.

Medium of disclosure: insurance distribution

6.1ZA.19B R Where this section requires an *insurance distributor* to provide information to *clients* in relation to a *life policy* it must do so in accordance with

■ COBS 7.4 (Means of communication to clients), unless COBS 6.1ZA.18AR(2) applies.

[**Note:** article 23 of the *IDD*]

Keeping the client up to date: MiFID business

6.1ZA.20 UK

46(4) Investment firms shall notify a client in good time about any material change to the information provided under Articles 47 to 50 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

[**Note:** article 46(4) of the *MiFID Org Regulation*]

Keeping the client up to date: insurance distribution

6.1ZA.20A R

(1) A *firm* carrying on *insurance distribution activities* must notify a *client* in good time about any material change to the information provided in relation to an *insurance distribution activity* under this section which is relevant to a service that the *firm* is providing to that *client*.

(2) A *firm* must provide this notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

Existing clients: MiFID business

6.1ZA.21 G

(1) A *firm* need not treat each of several transactions in respect of the same type of *financial instrument* as a new or different service and so does not need to comply with the disclosure *rules* in this chapter in relation to each transaction.

[**Note:** recital 69 to the *MiFID Org Regulation*]

(2) A *firm* should ensure that the *client* has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.

Compensation information: MiFID business

6.1ZA.22 R

(1) A *firm* must make available to a *client*, who has used or intends to use a *firm's* services, information necessary for the identification of the *compensation scheme* if the *firm* is a *participant firm*.

(2) The information under (1) must include the amount and scope of the cover offered by the *compensation scheme*.

(3) A *firm* must provide, on the *client's* request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

(4) The information provided for in this *rule* must be made available in a *durable medium* or via a website if the *website conditions* are satisfied in the official language or languages of the *United Kingdom*.

[**Note:** article 10(1) and (2) of the *Investor Compensation Directive*]

Record keeping: information about the firm and compensation information for MiFID business and insurance distribution

6.1ZA.23 G *Firms* are reminded of the general record-keeping requirements ■ SYSC 3.2 (for *insurers* and *managing agents*) and ■ SYSC 9 (for other *firms*).

6.1A Adviser charging and remuneration

Application - Who? What?

6.1A.1 R

(1) This section applies to a *firm* which makes *personal recommendations* to *retail clients* in relation to *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs* or *P2P agreements*.

(2) This section does not apply to a *firm* giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

6.1A.1A G

■ PERG 8.30B (Personal recommendations) describes what is meant by a *personal recommendation* in the context of the definition of the *regulated activity* of *advising on investments (except P2P agreements)*. That *guidance* is also relevant to the meaning of *personal recommendation* in this section in relation to a *retail investment product*. The *guidance* in ■ PERG 8.24 to ■ PERG 8.30B does not apply to the *regulated activity* of *advising on P2P agreements*.

6.1A.1B G

In this section, ■ COBS 6.1A.4AR, ■ COBS 6.1A.4ABR and ■ COBS 6.1A.4BR are not relevant to a *firm* making *personal recommendations* in relation to *P2P agreements*.

6.1A.2 R

This section does not apply to a *firm* when it gives *basic advice* in accordance with the *basic advice rules*.

6.1A.2A R

This section does not apply to a *firm* when it makes a *personal recommendation* to a *retail client* in relation to a *Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.

Application - Where?

6.1A.3 R

This section does not apply if the *retail client* is outside the *United Kingdom* except to the extent that the service provided is *advising on conversion or transfer of pension benefits*.

Requirement to be paid through adviser charges

6.1A.4 R

Except as specified in this section, a firm must:

(1) only be remunerated for the *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*; and

(2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in connection with the *firm's business of advising* or any other related services, regardless of whether it intends to refund the payments or pass the benefits on to the *retail client*; and

(3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *adviser charges* in relation to the *retail client's retail investment product* or *P2P agreement* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *adviser charges* are recovered from the *retail client*.

Exception: Events before December 2012

6.1A.4A R A *firm* and its *associates* may:

(1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1A.4 R if:

(a) the *personal recommendation* was made on or before 30 December 2012;

(b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012;

(c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;

(d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and

(e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and

(2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to that *firm* or its *associate*.

6.1A.4AA G (1) A *firm* may continue to accept a commission, remuneration or benefit of any kind after 30 December 2012 if there is a clear link between the payment and an investment in a *retail investment product* which was made by the *retail client* following a *personal recommendation* made, or a transaction executed, on or before 30 December 2012. This is the case even if the *firm* makes a *personal recommendation* to the same *retail client* after 30 December 2012 to the extent that the continued payment can properly be regarded as linked to the pre 31 December 2012 *personal recommendation* or transaction, rather than the new *personal recommendation*. Of course this is dependent upon the terms of the contract contemplating the continued receipt of such payments.

(2) Examples of circumstances where a commission, remuneration or benefit is clearly linked to the retention of an investment in a *retail investment product* and can therefore continue to be accepted include (in each case where the terms of the contract contemplate a continued payment of the kind referred to in (1)):

(a) no change is made to the *retail client's* investment in the relevant *retail investment product*;

(b) the *retail client's* investment in, or regular contribution to, the relevant *retail investment product* is reduced; the *firm* may continue to accept the payment associated with the reduced investment amount;

(c) the *retail client's* investment in the relevant *retail investment product* is transferred from accumulation *units* to income *units* or vice versa;

(d) the *retail client* transfers all or part of his investment between funds within a *life policy*.

(3) If a *firm* makes a *personal recommendation* to a *retail client* and wishes to:

(a) receive remuneration for that *personal recommendation* in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by (1); or

(b) be paid additional amounts for any actions which are linked to a new amount invested by the *retail client* in the relevant *retail investment product*;

it should only be paid those additional amounts for that *personal recommendation* or for those actions by *adviser charges*.

(4) A *firm* may offset against any *adviser charges* which are payable by the *retail client* any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in (1).

6.1A.4AB R A *firm* and its *associates* may solicit and accept a commission, remuneration or benefit of any kind from a *discretionary investment manager* in the circumstances in ■ COBS 6.1A.4 R if:

(1) the *firm* or its associates recommended the *discretionary investment manager* to a *retail client* on or before 30 December 2012;

(2) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012;

(3) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;

(4) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and

(5) the *retail client* agreed an investment mandate with the *discretionary investment manager* within a reasonable time of the recommendation to use the *discretionary investment manager* being made.

6.1A.4AC G (1) If a *firm* makes a recommendation of a *discretionary investment manager* to a *retail client* and wishes to:

(a) receive remuneration for that recommendation in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by ■ COBS 6.1A.4AB R; or

(b) be paid additional amounts for any actions linked to a new amount invested by the retail client through the same *discretionary investment manager*;

it should only be paid those additional amounts for that recommendation or for those actions by *adviser charges*.

(2) A *firm* may offset against any *adviser charges* which are payable by the *retail client* any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in ■ COBS 6.1A.4AB R.

Re-registration of commission when a retail client moves to a new adviser

6.1A.4B R If a *retail client* chooses to become a *client* of a *firm* and that *firm* or its *associate* enters into an arrangement in ■ COBS 6.1A.4AR (2), the *firm* must:

(1) before the arrangement is entered into, disclose to the *retail client* that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its *associate*;

(2) throughout the period during which the *firm* or its *associate* receives the commission, remuneration or benefit of any kind, provide the *retail client* with an ongoing service; and

(3) as soon as reasonably practicable after it makes the disclosure in (1):

(a) disclose to the *retail client*, as a cash amount or percentage of funds under management, the amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and

(b) provide the *retail client* with a description of the ongoing service it will provide to the *retail client* in accordance with (2).

Exception: Employer or trustee funded pension advice charge

6.1A.4C R A *firm* may receive an *employer or trustee funded pension advice charge*.

Exception: receipt and refund of adviser charges

6.1A.5 G A *firm* may receive an *adviser charge* that is no longer payable (for example, after the service it is received in payment for has been amended or terminated) provided the *firm* refunds any such payment to the *retail client*.

Acceptable minor non-monetary benefits

6.1A.5A R (1) For the purposes of ■ COBS 6.1A.4R(2), a *firm* or its *associate* may solicit or accept minor non-monetary benefits which meet the requirements of:

(a) ■ COBS 2.3A.15R, in relation to the provision of *investment services*; or

(b) paragraph (2), in relation to other business.

(2) An acceptable minor non-monetary benefit is one which:

(a) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way;

(b) is capable of enhancing the quality of service provided to the *client*;

(c) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;

(d) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and

(e) consists of:

(i) information or documentation relating to a specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*, that is generic in nature or personalised to reflect the circumstances of an individual *client*;

(ii) written material from a third party that is commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company, or where the third party *firm* is contractually engaged and paid by the *issuer* to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any *firms* wishing to receive it, or to the general public;

(iii) participation in conferences, seminars and other training events on the benefits and features of a specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*; and

(iv) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under (iii).

(v) research relating to an issue of *shares*, *debentures*, *warrants* or *certificates representing certain securities* by an *issuer*, which is:

(A) produced:

(1)prior to the issue being completed; and

(2)by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and

(B) made available to prospective investors in the issue; or

(vi) research that is received so that the *firm* may evaluate the research provider's research service, provided that:

(A) it is received during a trial period that lasts no longer than three *months*;

(B) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;

(C) the trial period is not commenced with the research provider within 12 *months* from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and

(D) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record

of how the conditions in (A) to (C) were satisfied for each such trial period.

6.1A.5B G ■ COBS 2.3A.8R sets out the conditions to be met if a fee, commission or non-monetary benefit is designed to enhance the quality of the service to a *client* in relation to *MiFID, equivalent third country or optional exemption business* or the distribution of an *insurance-based investment product*. For the purposes of ■ COBS 2.3A.19R(2) and ■ COBS 6.1A.5AR(2), those conditions are also likely to be relevant to *firms* considering whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service to a *client* in relation to the restriction in ■ COBS 6.1A.4R(2).

[**Note:** articles 24(7) and (8) of *MiFID* refer to minor non-monetary benefits that are capable of enhancing the quality of service provided to the *client*]

Related and other services

6.1A.6 R 'Related service(s)' for the purposes of ■ COBS 6.1A includes:

(1) *arranging* or *executing* a transaction which has been recommended to a *retail client* by the *firm*, an *associate* or another *firm* in the same *group* or conducting administrative tasks associated with that transaction; or

(2) managing a relationship between a *retail client* (to whom the *firm* provides *personal recommendations* on *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs* or *P2P agreements*) and a *discretionary investment manager* or providing a service to such a client in relation to the investments managed by such a manager; or

(3) recommending a *discretionary investment manager* to a *retail client* (to whom the *firm* provides *personal recommendations* or other services in relation to *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs* or *P2P agreements*).

6.1A.6A G 'Other services' in ■ COBS 6.1A.6R (3) includes:

(1) providing information relating to *retail investment products*, *pension transfers*, *pension conversions*, *pension opt-outs*, *P2P agreements* or *operators of electronic systems in relation to lending* to the *retail client*, for example, general market research; or

(2) passing on information from the *discretionary investment manager* to the *retail client*.

Guidance on the requirement to be paid through adviser charges

6.1A.7 G The requirement to be paid through *adviser charges* does not prevent a *firm* from making use of any facility for the payment of *adviser charges* on behalf of the *retail client* offered by another *firm* or other third parties provided that the facility complies with the requirements of ■ COBS 6.1B.9R.

6.1A.8 G Examples of payments and benefits that should not be accepted under the requirement to be paid through *adviser charges* include:

(1) a share of the *retail investment product* charges or *platform service provider's* charges, or *retail investment product* provider's or *platform service provider's* revenues or profits;

(2) a commission set and payable by a *retail investment product* provider or an *operator of an electronic system in relation to lending* in any jurisdiction; and

(3) a share of the *operator of the electronic system in relation to lending's* charges, revenues or profits.

Requirements on a firm making a personal recommendation in respect of its own retail investment products or P2P agreements

6.1A.9 R If the *firm* or its *associate* is the *retail investment product* provider, *platform service provider* or *operator of an electronic system in relation to lending*, the *firm* must ensure that the level of its *adviser charges* is at least reasonably representative of the cost of the services associated with making the *personal recommendation* (and related services).

6.1A.10 G An *adviser charge* is likely to be reasonably representative of the cost of the services associated with making the *personal recommendation* if:

(1) the total expected costs associated with making a *personal recommendation* and distributing the *retail investment product* will:

(a) be recovered through *adviser charges*; and

(b) not be recovered by charges for, or profits from, other services (such as manufacturing and administering the *retail investment product*);

(2) the *adviser charges* are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the *firm's* established payback period; and

(3) were the *personal recommendation* and any related services to be provided by an unconnected *firm*, the level of *adviser charges* would be appropriate in the context of the service being provided by the *firm*.

6.1A.10A G (1) In COBS 6.1A.10G(1), the total costs associated with making a *personal recommendation* and distributing the *retail investment product* include attributable indirect costs from the *firm's* (or *group's*) wider business such as *firm* or *group* overheads.

(2) In COBS 6.1A.10G(2), the *firm's* established payback period is the period of time in which the cash outflows associated with an investment made by the *firm* (or *group*) are expected to be recovered from the cash inflows generated by the *adviser charges*.

Requirement to use a charging structure

6.1A.11 R A *firm* must determine and use an appropriate charging structure for calculating its *adviser charge* for each *retail client*.

6.1A.12 G A *firm* can use a standard charging structure.

6.1A.13 G In determining its charging structure and *adviser charges* a *firm* should have regard to its duties under the *client's best interests rule*. Practices which may indicate that a *firm* is not in compliance with this duty include:

(1) varying its *adviser charges* inappropriately according to provider or, for substitutable and competing *retail investment products*, the type of *retail investment product*; or

(2) allowing the availability or limitations of services offered by third parties to facilitate the payment of *adviser charges* to influence inappropriately its charging structure or *adviser charges*; or

(3) varying its *adviser charges* inappropriately according to *operator of an electronic system in relation to lending*.

6.1A.14 R A *firm* must not use a charging structure which conceals the amount or purpose of any of its *adviser charges* from a *retail client*.

6.1A.14A R A *firm* must not make a *personal recommendation* to a *retail client* in relation to a *retail investment product* or *P2P agreement* if it knows, or ought to know, that:

(1) the product's charges, the *platform service provider's* charges or the *operator of the electronic system in relation to lending's* charges are presented in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable by that *retail client*; or

(2) the product's charges or other payments are maintained by the *retail investment product* provider or *operator of the electronic system in relation to lending* at a level such that a cash rebate, other than a cash rebate permitted by ■ COBS 6.1B.7A R or ■ COBS 6.1E.10R (2), is payable to the *retail client*.

6.1A.15 G A *firm* is likely to be viewed as operating a charging structure that conceals the amount or purpose of its *adviser charges* if, for example:

(1) it makes arrangements for amounts in excess of its *adviser charges* to be deducted from a *retail client's* investments from the outset, in order to be able to provide a cash refund to the *retail client* later; or

(2) it provides other services to a *retail client* (for example, *advising on a home finance transaction* or *advising* on an *equity release transaction*), and its *adviser charges* do not represent a reasonable proportion of the costs associated with the *personal recommendation* for the *retail investment product* or *P2P agreement* and its related services.

Calculation of the cost of adviser services to a client

6.1A.16 G To meet its responsibilities under the *client's best interests rule* and *Principle* 6 (Customers' interests):

(1) a *firm* should consider whether the *personal recommendation* or any other related service is likely to be of value to the *retail client* when the total charges the *retail client* is likely to be required to pay are taken into account;

(2) a *firm* that *advises on conversion or transfers of pension benefits* should consider whether it would be more appropriate to give a *retail client abridged advice* (under ■■ COBS 19.1A) rather than a *full pension transfer or conversion advice* (under ■ COBS 19.1) taking into account the total charges the *retail client* is likely to pay.

Initial information for clients on the cost of adviser services

6.1A.17 R A *firm* must disclose its charging structure to a *retail client* in writing, in good time before making the *personal recommendation* (or providing related services) or commencement of the *abridged advice* process.

6.1A.18 G A *firm* may wish to consider disclosing as its charging structure a list of the advisory services it offers with the associated indicative charges which will be used for calculating the *adviser charge* for each service.

6.1A.18A R

(1) Where the services to be provided in ■ COBS 6.1A.17R include *full pension transfer or conversion advice* (other than where the only *safeguarded benefit* involved is a *guaranteed annuity rate*), the disclosure required under ■ COBS 6.1A.17R must include a personalised charges communication.

(2) The personalised charges communication in (1) must include the following:

(a) the expected amounts payable (in *cash terms*) for the *full pension transfer or conversion advice*, and, where applicable, any *advice on investments* (whether by the *firm* or any other *firm*) in connection with the *retail client's pension transfer* or *pension conversion*;

(b) where the *firm* is subject to the ban on contingent charging rules (see ■ COBS 19.1B) (Ban on contingent charging)) because the *client* does not fall within one of the exceptions in ■ COBS 19.1B.9R, a statement that the amount of charges payable in relation to *full pension transfer or conversion advice* is the same whether or not the advice is to transfer or convert or to remain in their *ceding arrangement*;

(c) the estimated amount of the monthly charge (in *cash terms*) for ongoing advice and/or services (whether provided by the *firm* or any other *firm*) in the first year following the transfer or conversion, assuming that funds remain invested with no growth but taking into account the cost of initial advice;

(d) whether and the extent to which the charges in the first year are lower than the charges anticipated in subsequent years;

(e) if the charges are significantly lower in the first year compared to subsequent years, the *firm* must indicate the amount of the

monthly charge (in *cash terms*) in subsequent years until the point at which the charges are no longer expected to vary significantly from year to year; and

(f) where relevant, a statement that the expected amounts payable in (a) do not include any amounts that may be payable by the *client* for any related advice or services they may receive that fall outside the *UK* regulatory regime.

(3) Where the *firm* (or any other *firm*) offers different types of ongoing advice and/or services with different charging structures, the *firm* must include in the personalised charges communication, the charges for each type of ongoing advice and/or service it offers.

(4) Where a *firm* has reasonable grounds to believe that it is not subject to the ban on contingent charging *rules* (see ■ COBS 19.1B) because the *client* falls within one of the exceptions in ■ COBS 19.1B.9R:

(a) the reasons why the *firm* considers that the *client* falls within one of the exceptions, and including a description of the evidence relied on by the *firm* in support;

(b) the amounts payable (in *cash terms*) if the *firm's* recommendation is for the *client* not to transfer or not to convert their pension, and the amounts payable (including any amounts recoverable by the *firm* (or any other *firm*) as part of ongoing charges) if the advice is to transfer or to convert; and

(c) a statement that:

(i) the reasons set out in (4a) may change after further analysis of the *client's* circumstances; and

(ii) if after further analysis of the *client's* circumstances, the *firm* determines that it is subject to the ban on contingent charging *rules* because the *client* does not fall within one of the exceptions in ■ COBS 19.1B.9R, then the amount of charges payable in relation to *full pension transfer or conversion advice* is the same whether or not the advice is to transfer or convert or to remain in their *ceding arrangement*.

6.1A.18B R Where the services to be provided in ■ COBS 6.1A.17R include *abridged advice*, the *firm* must disclose to the *client* in writing the amounts payable (in *cash terms*) in each of the following situations:

(1) the *firm* gives *abridged advice* and a *personal recommendation* not to transfer or convert their pension;

(2) the *firm* starts the *abridged advice* process but is unable to take a view on whether it is in the *client's* best interests to transfer or convert without undertaking *full pension transfer or conversion advice*; and

(3) the *firm* gives *abridged advice* followed by *full pension transfer or conversion advice* .

6.1A.19 G In order to meet the requirement in the *rule* on information disclosure before providing services (■ COBS 2.2.1 R), a *firm* should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses *cash terms*. If a *firm's* charging structure is in non-cash

terms, examples in *cash terms*should be used to illustrate how the charging structure will be applied in practice.

6.1A.20 G A *firm* is unlikely to meet its obligations under the *fair, clear and not misleading rule* and the *client's best interests rule* unless it ensures that:

(1) the charging structure it discloses reflects, as closely as is practicable, the total *adviser charge* to be paid; for example, the *firm* should avoid using a wide range; and

(2) if using hourly rates in its charging structure, it states whether the rates are indicative or actual hourly rates, provides the basis (if any) upon which the rates may vary and provides an approximate indication of the number of hours that the provision of each service is likely to require.

6.1A.21 G [deleted]

Ongoing payment of adviser charges

6.1A.22 R A *firm* must not use an *adviser charge* which is structured to be payable by the *retail client* over a period of time unless (1) or (2) applies:

(1) the *adviser charge* is in respect of an ongoing service for the provision of *personal recommendations* or related services and:

(a) the *firm* has disclosed that service along with the *adviser charge*; and

(b) the *retail client* is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the *retail client* to give any reason; or

(2) the *adviser charge* relates to a *retail investment product* or a *pension transfer*, *pension conversion* or *pension opt-out* or arrangement with an *operator of an electronic system in relation to lending* for which an instruction from the *retail client* for regular payments is in place and the *firm* has disclosed that no ongoing *personal recommendations* or service will be provided.

6.1A.22A G To comply with the *rule* on providing a *retail client* with the right to cancel an ongoing service for the provision of *personal recommendations* or related services without penalty (■ COBS 6.1A.22R (1)(b)) a *firm* should:

(1) ensure that any notice period of the *retail client's* right of cancellation is reasonable;

(2) not make any charge in respect of cancellation of the ongoing service except for an amount which is in proportion to the extent of the service already provided by the *firm* up to the date of cancellation of the ongoing service; and

(3) not make cancellation conditional on, for example, requiring the *retail client* to sell any *retail investment products* or to assign any *P2P agreements* to which the ongoing service relates.

6.1A.22B R If a *retail client* exercises his right to cancel an ongoing service, the *firm* must clearly disclose to the *retail client* whether charges for other services provided by the *firm*, such as *custody* services, will continue to be payable by the *retail client*.

6.1A.23 R If COBS 6.1A.22R(1) or (2) do not apply, a *firm* may not offer *credit* to a *retail client* for the purpose of paying *adviser charges* unless this would be in the best interests of the *retail client*.

Disclosure of total adviser charges payable

6.1A.24 R

(1) A firm must agree with and disclose to a *retail client* the total *adviser charge* payable to it or any of its *associates* by a *retail client*.

(2) A disclosure under (1) must:

(a) be in *cash terms* (or convert non-cash terms into illustrative cash equivalents);

(b) be as early as practicable;

(c) be in a *durable medium* or through a website (if it does not constitute a *durable medium*) if the *website conditions* are satisfied; and

(d) if there are payments over a period of time, include the amount and frequency of each payment due, the period over which the *adviser charge* is payable and the implications for the *retail client* if the *retail investment product* or arrangement with the *operator of an electronic system in relation to lending* is cancelled before the *adviser charge* is paid and, if there is no ongoing service, the sum total of all payments.

6.1A.24A G If the price of the *retail investment product* may vary as a result of fluctuations in the financial markets and the *adviser charge* is expressed as a percentage of that price, a *firm* need not disclose to the *retail client* the total *adviser charge* payable to the *firm* or any of its *associates* by the *retail client* until after execution of the transaction, provided it then does so promptly.

6.1A.25 G A *firm* may include the information required by the *rule* on disclosure of total *adviser charges* (COBS 6.1A.24 R) in a *suitability report*.

6.1A.26 G To comply with the *rule* on disclosure of total *adviser charges* (COBS 6.1A.24 R) and the *fair, clear and not misleading rule*, a *firm's* disclosure of the total *adviser charge* should:

(1) provide information to the *retail client* as to which particular service an *adviser charge* applied to;

(2) include information as to when payment of the *adviser charge* is due;

(3) inform the *retail client* if the total *adviser charge* varies materially from the charge indicated for that service in the *firm's* charging structure;

(4) if an ongoing *adviser charge* is expressed as a percentage of funds under management, clearly reflect in the disclosure that the *adviser charge* may increase as the fund grows; and

(5) if an ongoing *adviser charge* applies for an ongoing service, clearly confirm the details of the ongoing service, its associated charges, and how the *retail client* can cancel this service and cease payment of the associated charges.

Record keeping

6.1A.27 R A *firm* must keep a record of:

(1) its charging structure;

(2) the total *adviser charge* payable by each *retail client*; and

(3) if the total *adviser charge* paid by a *retail client* has varied materially from the charge indicated for that service in the *firm's* charging structure, the reasons for that difference.

6.1B Retail investment product provider, operator of an electronic system in relation to lending, and platform service provider requirements relating to adviser charging and remuneration

Application - Who? What?

6.1B.1 R

(1) This section applies to:

(a) a *firm* which is a *retail investment product* provider;

(b) in relation to ■ COBS 6.1B.9 R, ■ COBS 6.1B.10 G and ■ COBS 6.1B.11 G, a *platform service provider*; and

(c) a *firm* which is an *operator of an electronic system in relation to lending*;

in circumstances where a *retail client* receives a *personal recommendation* in relation to a *retail investment product* or *P2P agreement* and also where a *retail investment product* transaction is executed by a *platform service provider* and no *personal recommendation* has been made.

(2) This section does not apply to a *retail investment product* provider in circumstances where a *firm* gives advice or provides services to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

6.1B.1A G

■ PERG 8.30B (Personal recommendations) describes what is meant by a *personal recommendation* in the context of the definition of the *regulated activity* of *advising on investments (except P2P agreements)*. That *guidance* is also relevant to the meaning of *personal recommendation* in this section in relation to a *retail investment product*. The *guidance* in ■ PERG 8.24 to ■ PERG 8.30B does not apply to the *regulated activity* of *advising on P2P agreements*.

6.1B.1B G

In this section, ■ COBS 6.1B.5AR and ■ COBS 6.1B.7AR are not relevant in circumstances where a *retail client* receives a *personal recommendation* in relation to a *P2P agreement*.

6.1B.2 R

This section does not apply to a *firm* when a *retail client* receives *basic advice* in accordance with the *basic advice rules*.

6.1B.2A R This section does not apply to a *firm* in circumstances where a *retail client* receives a *personal recommendation* in relation to one of the *firm's Holloway sickness policies*, provided that the *Holloway policy special application conditions* are met.

6.1B.3 G This section applies to a *firm* when it makes a *personal recommendation* on a *retail investment product* or *P2P agreement* and where a *retail investment product* for which it is the *retail investment product* provider or *P2P agreement* which it facilitates as the *operator of an electronic system in relation to lending* is the subject of a *personal recommendation* made by another *firm*.

Application - Where?

6.1B.4 R This section does not apply if the *retail client* is outside the *United Kingdom*.

Requirement not to offer commissions

6.1B.5 R

(1) Except as specified in ■ COBS 6.1B.5AR, a *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, or to any other third party for the benefit of that *firm*, in connection with that *firm's business of advising* (or any related services), except those that facilitate the payment of *adviser charges* from a *retail client's* investments in accordance with this section.

(2) Paragraph (1) does not apply to minor non-monetary benefits which meet the requirements of:

(a) ■ COBS 2.3A.19R, in connection with the provision of *investment services*; or

(b) ■ COBS 6.1A.5AR(2), in connection with other business.

6.1B.5-A G The *guidance* in ■ COBS 6.1A.5BG is also relevant for the purposes of ■ COBS 6.1B.5R(2).

6.1B.5A R A *firm* and its *associates* may:

(1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1B.5 R if:

(a) the *personal recommendation* was made on or before 30 December 2012;

(b) the offer and payment was permitted by the *rules* in force on 30 December 2012;

(c) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;

(d) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and

(e) the *retail client* enters into the transaction in respect of which the *personal recommendation* was given within a reasonable time of the *personal recommendation* being given; and

(2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its *associate*.

6.1B.5B G A *firm* may continue paying commission, remuneration or benefits of any kind to another *firm* in relation to a *personal recommendation* made by that other *firm* in circumstances where that other *firm* may accept that commission, remuneration or benefit of any kind (see ■ COBS 6.1A.4A R and ■ COBS 6.1A.4AA G).

6.1B.6 G [deleted]

Distinguishing product and P2P platform charges from adviser charges

6.1B.7 R A *firm* must:

(1) take reasonable steps to ensure that its *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* are not structured so that they could mislead or conceal from a *retail client* the distinction between those charges and any *adviser charges* payable in respect of its *retail investment products* or investments in *P2P agreements* made through the system of which it is the *operator of an electronic system in relation to lending*;

(2) not include in any marketing materials in respect of its *retail investment products*, the service it offers as an *operator of an electronic system in relation to lending* or facilities for collecting *adviser charges* any statements about the appropriateness of levels of *adviser charges* that a *firm* could charge in making *personal recommendations* or providing related services in relation to its *retail investment products* or investments through the system in relation to which it is the *operator of an electronic system in relation to lending* ; and

(3) not defer, discount or rebate *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable, including by maintaining *retail investment product* charges or its charges as an *operator of an electronic system in relation to lending* at a level such that a cash rebate, other than a cash rebate permitted by ■ COBS 6.1B.7A R or ■ COBS 6.1E.10R (2), is payable to the *retail client*.

6.1B.7A R A *retail investment product* provider may maintain *retail investment product* charges at a level such that a cash rebate is payable to the *retail client* if:

(1) the *retail investment product* transaction was agreed on or before 5 April 2014 and executed within a reasonable time of that agreement; and

(2) the *retail client's* right to receive the cash rebate arose on or before 5 April 2014; and

(3) on or after 6 April 2014 no change is made to that product, or, where there is such a change on or after 6 April 2014, only in relation to the unchanged part of that product.

6.1B.7B G In the *FCA's* view, if the *platform service provider* retained any part of a rebate on or before 5 April 2014, the *retail client* is unlikely to have had a right to receive that part of the rebate.

6.1B.7C G The following examples do not entail changes to the *retail investment product*:

(1) no change is made to the *retail client's* investment in the relevant product or to the level of the *retail client's* regular contributions into that product;

(2) the *retail client's* investment in, or regular contribution to, the relevant product is reduced: the *retail investment product* provider may continue to pay the cash rebate associated with the reduced investment amount;

(3) the *retail client's* investment in the relevant product is transferred from accumulation *units* to income *units* or vice versa;

(4) part of the *retail client's* investment is switched between funds within a *retail investment product*, such as a *SIPP*, or a *retail investment product* wrapper, such as an *ISA*: the *retail investment product* provider may continue to pay the cash rebate associated with the part of the *retail client's* investment which has not been switched into another fund;

(5) the level of cash rebate payable to the *retail client* is reduced;

(6) the product is converted to a share class which does not pay a commission, remuneration or benefit of any kind to a *firm* and is otherwise unchanged.

6.1B.8 G ■ COBS 6.1B.7 R does not prevent a *firm* from offering a promotional discount to a *retail client* in the form of extra *units* or additional investment, but a *firm* should not offer to invest more than 100% of the *retail client's* investment.

Requirements on firms facilitating the payment of adviser charges

6.1B.9 R ■ COBS 6.1B.7 R does not prevent a *firm* from offering a promotional discount to a *retail client* in the form of extra *units* or additional investment, but a *firm* that offers to facilitate, directly or through a third party, the payment of *adviser charges*, including by means of a *platform service* must:

(1) obtain and validate instructions from a *retail client* in relation to an *adviser charge*;

(2) offer sufficient flexibility in terms of the *adviser charges* it facilitates; and

(3) not pay out or advance *adviser charges* to the *firm* to which the *adviser charge* is owed over a materially different time period, or on a materially different basis to that in which it recovers the *adviser charge* from the *retail client* (including paying any *adviser charges* to the *firm* that it cannot recover from the *retail client*).

6.1B.9A G A *firm* facilitates the payment of *adviser charges* for the purposes of ■ COBS 6.1B.9 R if the *adviser charge* is not paid directly by the *retail client*, but is instead paid on behalf of the *retail client* via the *firm*.

6.1B.9B G A *firm* may facilitate the payment of *adviser charges* for the purposes of ■ COBS 6.1B.9 R by:

(1) selling all or part of the *retail client's retail investment product* to pay the *adviser charge*; or

(2) disposing of or reducing all or part of the *retail client's* rights under the *retail investment product* (for example, by way of a part disposal which creates benefits under a *life policy*) to pay the *adviser charge*; or

(3) separating out an amount or amounts for the payment of the *adviser charge* from the amount received from the *retail client* to be invested or from the *premium* in the case of a *life policy*; or

(4) paying the *adviser charge* from the *retail client's* cash account.

6.1B.10 G A *firm* should consider whether the flexibility in levels of *adviser charges* it offers to facilitate is sufficient so as not to unduly influence or restrict the charging structure and *adviser charges* that the *firm* providing the *personal recommendation* or related services can use.

6.1B.11 G ■ COBS 6.1B.9R(3) does not prevent a *firm*, if this is in the *retail client's* best interests, from entering into an agreement with another *firm* which is providing a *personal recommendation* to a *retail client*, or with a *retail client* of such a *firm*, to provide it with *credit* separately in accordance with the *rules* and *guidance* on providing credit and other benefits to *firms* that provide *personal recommendations* on *retail investment products* or *P2P agreements* (see ■ COBS 2.3.12 E, ■ COBS 2.3.12A G), ■ COBS 2.3A.27E and ■ COBS 2.3A.28G).

6.1C Consultancy charging and remuneration

Application - Who? What?

6.1C.1 R

(1) This section applies to a *firm* that gives advice, or provides services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

(2) Without prejudice to (1), this section does not apply to a *firm* that makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*.

Application - Where?

6.1C.2 R

This section does not apply if the employer is outside the *United Kingdom*.

Interpretation

6.1C.3 R

In this section 'giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*' includes:

(1) giving advice or assistance to an employer on the operation of such a scheme;

(2) taking, or helping the employer to take, the steps that must be taken to enable an employee of the employer to become a member of such a *scheme*; and

(3) giving advice to an employee, pursuant to an agreement between the employer and the adviser, about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of such a scheme.

Requirement to be paid through consultancy charges

6.1C.4 G

■ COBS 6.1C.1 (Application - Who? What?) and ■ COBS 6.1C.3 (Interpretation) mean (for example) that the cost of any advice given to an employee pursuant to an agreement between the employer and the adviser about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of a *group personal pension scheme* or *group stakeholder pension scheme* are subject to the *rules* in this section, not the *rules* on *adviser charging* (■ COBS 6.1A).

6.1C.5 R Except as specified in ■ COBS 6.1C.5A R, ■ COBS 6.1C.5B R and ■ COBS 6.1C.5C R, a *firm* must:

(1) only be remunerated for giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* by *consultancy charges* or by a fee payable by the employer;

(2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in relation to that advice, or those services, regardless of whether it intends to refund the payments or pass the benefits on to the *group personal pension scheme* or *group stakeholder pension scheme*; and

(3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *consultancy charges* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *consultancy charges* are recovered from the relevant *group personal pension scheme* or *group stakeholder pension scheme*.

6.1C.5A R A *firm* and its *associates* may, except in relation to a *qualifying scheme*:

(1) solicit and accept a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1C.5 R if:

(a) the employer's part of the relevant scheme was established on or before 30 December 2012; and

(b) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012; and

(2) enter into an arrangement under which the right to receive the commission, remuneration or benefit in (1) is transferred to that *firm* or its *associate*.

Re-registration of commission when an employer moves to a new adviser

6.1C.5B R If an employer chooses to appoint a *firm* to provide advice or services in connection with a *group personal pension scheme* or a *group stakeholder pension scheme* and that *firm* or its *associate* enters into an arrangement in ■ COBS 6.1C.5AR (2), the *firm* must:

(1) before the arrangement is entered into, disclose to the employer that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its *associate*;

(2) throughout the period during which the *firm* or its *associate* receives the commission, remuneration or benefit of any kind, provide the employer with an ongoing service; and

(3) as soon as reasonably practicable after it makes the disclosure in (1):

(a) disclose to the employer the basis and amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and

(b) provide the employer with a description of the ongoing service it will provide to the employer in accordance with (2).

6.1C.5C R In connection with a *qualifying scheme*, a *firm* may only solicit or accept *consultancy charges* from an operator of a *qualifying scheme* if the *operator* has confirmed that express agreement has been given by members of that scheme under ■ COBS 19.6.4 R.

6.1C.6 G A *firm* may receive a *consultancy charge* that is no longer payable (for example, after the service it is received in payment for has been amended or terminated) provided the *firm* passes any such payments to the relevant *group personal pension scheme* or *group stakeholder pension scheme*.

6.1C.7 G The requirement to be paid through *consultancy charges* does not prevent a *firm* from making use of any facility for the payment of *consultancy charges* provided by another *firm* or other third parties provided that the facility complies with the requirements of ■ COBS 6.1D.9 R.

6.1C.8 G Examples of payments and benefits that should not be accepted under the requirement only to be paid through *consultancy charges* include:

(1) a share of the charges applied to a *group personal pension scheme*, *group stakeholder pension scheme* or the scheme provider's revenues or profits (except if the *firm* providing the advice to an employer in relation to such a scheme is the scheme provider);

(2) a commission set and payable by a *retail investment product* provider in any jurisdiction.

Requirements on a product provider giving advice to an employer in respect of the product provider's own group personal pension scheme or group stakeholder pension scheme products.

6.1C.9 R If the *firm* or its *associate* is the *group personal pension scheme* or *group stakeholder pension scheme* provider, the *firm* must ensure that the level of its *consultancy charges* is at least reasonably representative of the cost associated with giving the advice to the employer in relation to the relevant scheme.

6.1C.10 G A *consultancy charge* is likely to be reasonably representative of the cost of the services associated with giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* if:

(1) the total expected costs associated with advising the employer in relation to the *group personal pension scheme* or *group stakeholder pension scheme* will:

(a) be recovered through *consultancy charges*; and

(b) not be recovered by charges for, or profits from, other services (such as those associated with establishing and operating that scheme);

(2) *consultancy charges* are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the *firm's* established payback period; and

(3) (were the services to be provided by an unconnected *firm*), the level of *consultancy charges* would be appropriate in the context of the service being provided by the *firm*.

6.1C.10A G

(1) In ■ COBS 6.1C.10G(1), the total costs associated with advising the employer in relation to the *group personal pension scheme* or *group stakeholder pension scheme* include attributable indirect costs of the *firm's* (or *group's*) wider business such as *firm* or *group* overheads.

(2) In ■ COBS 6.1C.10G(2), the *firm's* established payback period is the period of time in which the cash outflows associated with an investment made by the *firm* (or *group*) are expected to be recovered from the cash inflows generated by the *adviser charges*.

Requirement to use a charging structure

6.1C.11 R

A *firm* must determine and use an appropriate charging structure for calculating its *consultancy charge* for each employer.

6.1C.12 G

A *firm* can use a standard charging structure.

6.1C.13 G

(1) In determining its charging structure and *consultancy charges* a *firm* should have regard to the best interests of the employer and the employer's employees.

(2) A *firm* may not be acting in the best interests of the employer and the employer's employees if it:

(a) varies its *consultancy charges* inappropriately according to product provider; or

(b) allows the availability or limitation of services offered by third parties to facilitate the payment of *consultancy charges* to influence inappropriately its charging structure or *consultancy charges*.

(3) *Firms* are reminded that the *client's best interests rule* may also apply.

6.1C.14 R

A *firm* must not use a charging structure which conceals the amount or purpose of any of its *consultancy charges* from an employer or an employee.

6.1C.15 G

A *firm* is likely to be viewed as operating a charging structure that conceals the amount or purpose of its *consultancy charges* if, for example, it makes arrangements for amounts in excess of its *consultancy charges* to be deducted from an employee's investments from the outset, in order to be able to provide a cash payment to the employer or employee later.

Initial information for clients on the cost of consultancy services

6.1C.16 R

A *firm* must disclose its charging structure to an employer in writing, in good time before giving advice, or providing services, to the employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*.

6.1C.17 G A *firm* should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses *cash terms*. If a *firm's* charging structure is in non-cash terms, examples in *cash terms* should be used to illustrate how the charging structure will be applied in practice.

Disclosure of total consultancy charges payable

6.1C.18 R

(1) A *firm* must agree with and disclose to an employer the total *consultancy charge* payable to it or any of its *associates*.

(2) A disclosure under (1) must:

(a) be in *cash terms* (or convert non-cash terms into illustrative cash equivalents);

(b) be made as early as practicable and, in any event, before the employer:

(i) selects a particular *group personal pension scheme* or *group stakeholder pension scheme* for the benefit of its employees; or

(ii) if applicable, reviews its *group personal pension scheme* or *group stakeholder pension scheme* arrangements;

(c) be in a *durable medium* or through a website (if it does not constitute a *durable medium*) if the *website conditions* are satisfied;

(d) if there are payments over a period of time, include:

(i) the amount and frequency of each payment due; and

(ii) the period over which the *consultancy charge* is payable;

(iii) an explanation of the implications for the employer and its employees if an employee leaves the employer's service; and

(iv) an explanation of the implications for the employer and its employees if contributions to the *group personal pension scheme* or *group stakeholder pension scheme* are cancelled before the *consultancy charge* is fully paid.

6.1C.19 G To comply with the *rule* on disclosure of total *consultancy charges* payable (■ COBS 6.1C.18R) and the *fair, clear and not misleading rule*, a *firm's* disclosure of the total *consultancy charge* should:

(1) provide information to the employer as to which particular service a *consultancy charge* applies;

(2) include information as to when payment of the *consultancy charge* is due;

(3) if an ongoing *consultancy charge* is expressed as a percentage of funds under management, clearly reflect in the disclosure how that *consultancy charge* may increase as the fund grows.

Requirement not to make a consultancy charge in certain circumstances

6.1C.20 R When an employer asks a *firm* to provide advice to the employer's employees, the *firm*:

(1) may make a *consultancy charge* for the cost of preparing and giving advice to each employee who chooses to accept his employer's offer of advice;

(2) must not make a *consultancy charge* for the cost of preparing or giving advice to an employee who chooses not to accept the offer of advice;

(3) (if the *firm* prepares generic advice to be given to more than one employee) must not make more than one *consultancy charge* for preparing that advice.

Disclosure to employees

6

6.1C.20A R A *firm* must take reasonable steps to ensure that its *representatives*, when making contact with an employee with a view to giving a *personal recommendation* on his or her employer's *group personal pension scheme* and/or *group stakeholder pension scheme*, inform the employee:

(1) that the *firm* will be providing a *personal recommendation* on a *group personal pension scheme* and/or *group stakeholder pension scheme* provided by the employer;

(2) whether the employee will be provided with a *personal recommendation* that is restricted to the *group personal pension scheme* or *group stakeholder pension scheme* provided by the employer or the recommendation will also cover other products; and

(3) that the employee will have to pay an *adviser charge* (if applicable) unless the *representative* is making contact pursuant to an agreement made between the *firm* and the employer under which the *firm* is remunerated by *consultancy charging* or a fee payable by the employer.

Record-keeping

6.1C.21 R A *firm* must keep a record of:

(1) its charging structure;

(2) the *consultancy charges* payable by each employer and each of the employer's employees; and

(3) if the *consultancy charge* for a particular service has varied materially from that indicated in the *firm's* charging structure, the reasons for that difference.

6.1D Product provider requirements relating to consultancy charging and remuneration

Application - Who? What?

6.1D.1 R This section applies to a *firm* that is a *group personal pension scheme* or *group stakeholder pension scheme* provider, but only if the *firm* providing the relevant scheme (or another *firm*) gives advice, or provides services, to an employer in connection with that scheme.

Application - Where?

6.1D.2 R This section does not apply if the employer is outside the *United Kingdom*.

Interpretation

6.1D.3 R In this section 'giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme*' includes:

(1) giving advice or assistance to an employer on the operation of such a scheme;

(2) taking, or helping the employer to take, the steps that must be taken to enable an employee of the employer to become a member of such a *scheme*; and

(3) giving advice to an employee, pursuant to an agreement between the employer and the advisor, about the benefits that are, or might be, available to the employee if he is, or if he becomes, a member of such a scheme.

Requirement not to offer commission, provide factoring or offer credit to a third party

6.1D.4 R (1) Except as specified in ■ COBS 6.1D.6A R, a *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, an *employee benefit consultant* or to any other third party for the benefit of that *firm*, *employee benefit consultant* or third party in relation to the sale or purchase of:

(a) a *group personal pension scheme* or *group stakeholder pension scheme*, whether or not that sale or purchase is accompanied or facilitated by advice given to the purchasing employer or the employer's employees; or

(b) an *investment*, if that sale or purchase is, or was, for the benefit of an *occupational pension scheme* established as an alternative to a *group personal pension scheme* or *group stakeholder pension scheme*.

(2) Except in connection with a *qualifying scheme*, paragraph (1)(a) does not prevent a *firm* from making a payment to a third party that has facilitated the payment of a *consultancy charge* from a *group personal pension scheme* or *group stakeholder pension scheme*, provided that that payment is only in respect of that facilitation.

(3) For the purposes of (1)(b) only, an *occupational pension scheme* will be established as an alternative to a *group personal pension scheme* or *group stakeholder pension scheme* if, in order to meet the most material of its objectives, an employer could reasonably have chosen to establish an *occupational pension scheme* on the one hand, or a *group personal pension scheme* or *group stakeholder pension scheme* on the other, and it chose to establish an *occupational pension scheme*.

6.1D.5 G The requirement not to offer or pay commission does not prevent a *firm* from making a payment to a third party in respect of administration or other charges incurred, for example a payment to a fund supermarket or a third party administrator.

6.1D.6 R A *firm* that produces a *group personal pension scheme* or *group stakeholder pension scheme* must not offer or make any credit available out of its own funds, and to or for the benefit of another *firm*, an *employee benefit consultant* or another third party.

6.1D.6A R A *firm* and its *associates* may, except in connection with a *qualifying scheme*:

(1) offer and pay a commission, remuneration or benefit of any kind in the circumstances set out in ■ COBS 6.1D.4 R if:

(a) the employer's part of the relevant scheme was established on or before 30 December 2012; and

(b) the offer or payment was permitted by the *rules* in force on 30 December 2012; and

(2) enter into an arrangement under which the right to receive the commission, remuneration or benefit of any kind in (1) is transferred to another *firm* or its *associate*.

Distinguishing product charges from consultancy charges

6.1D.7 R A *firm* must:

(1) take reasonable steps to ensure that its *group personal pension scheme* and *group stakeholder pension scheme* charges are not structured so that they could mislead or conceal from an employer the distinction between those charges and any *consultancy charges* payable in respect of the scheme; and

(2) not include in any marketing materials in respect of its *group personal pension schemes* or *group stakeholder pension schemes* any

statements about the appropriateness of levels of *consultancy charges* that a *firm* could charge in giving advice to an employer in relation to a such a scheme.

6.1D.8 G A *firm* should not offer to invest more than 100% of the *retail client's* contribution to a *group personal pension scheme* or *group stakeholder pension scheme*.

Requirements on firms facilitating the payment of consultancy charges

6.1D.9 R A *firm* that offers to facilitate, directly or through a third party, the payment of *consultancy charges* must:

(1) obtain and validate instructions from the relevant employer in relation to the *consultancy charge*;

(2) offer sufficient flexibility in terms of the *consultancy charges* it facilitates;

(3) not pay out or advance *consultancy charges* to the *firm* to which the *consultancy charge* is owed over a materially different time period, or on a materially different basis to that in which it recovers the *consultancy charges* from the employee (including paying any *consultancy charges* to the *firm* that it cannot recover from the employee); and

(4) ensure that the *consultancy charges* levied do not exceed those agreed between the employee's employer and the relevant adviser (unless the prior written consent of the employee is obtained).

6.1D.9A G A *firm* facilitates the payment of *consultancy charges* for the purposes of COBS 6.1D.9 R if the *consultancy charge* is not paid directly by the employee, but is instead paid on behalf of the employee via the *firm*.

6.1D.9B G A *firm* facilitates the payment of *consultancy charges* for the purposes of COBS 6.1D.9 R by:

(1) selling all or part of, or rights under, the employee's investment in a *group personal pension scheme* or *group stakeholder pension scheme* to pay the *consultancy charge*; or

(2) disposing of or reducing all or part of the employee's rights under the *group personal pension scheme* or *group stakeholder pension scheme* (for example, by way of a part disposal which creates benefits under a *life policy*) to pay the *consultancy charge*; or

(3) separating out an amount or amounts for the payment of the *consultancy charge* from the amount received from the employer on behalf of the employee or from the premium in the case of a *life policy*.

6.1D.10 G A *firm* should consider whether the flexibility in levels of *consultancy charges* it offers to facilitate is sufficient so as not to unduly influence or restrict the

charging structure and *consultancy charges* that the *firm* providing advice to an employer in relation to a *group personal pension scheme* or *group stakeholder pension scheme* can use.

Disclosure of total consultancy charges payable

6.1D.11 R A *firm* must, in good time, provide an employee with sufficient information on the total *consultancy charge* payable by the employee.

6.1D.12 G To comply with ■ COBS 6.1D.11R, a *firm's* disclosure should be in *cash terms* (or convert non-cash terms into illustrative cash equivalents) and should:

(1) include information as to the period over which the *consultancy charge* is payable;

(2) provide information on the implications for the employee if the employee leaves the employer's service or their contributions to the *group personal pension scheme* or *group stakeholder pension scheme* are cancelled before the *consultancy charge* is fully paid.

6.1D.13 G A *firm* may provide the disclosure in ■ COBS 6.1D.11R at the same time as it provides a *key features document*.

6.1E Platform services: platform charges and using a platform service for advising

Platform service providers: platform charges

6.1E.-1 R This section does not apply if the *retail client* is outside the *United Kingdom*.

6.1E.1 R

(1) A *platform service provider* must clearly disclose the total *platform charge* to the *retail client* in a *durable medium* in good time before the provision of *designated investment business*.

(2) In the event that it is not possible to make the disclosure in (1) in good time before the provision of *designated investment business*, the disclosure must be made as soon as practicable thereafter.

6.1E.2 G A *platform service provider* should pay due regard to its obligations under *Principle* 6 (Customers' interests), *Principle* 7 (Communications with clients) and the *client's best interests rule*, and ensure that it presents *retail investment products* without bias.

6.1E.3 G A *platform service provider* should pay due regard to its obligations under *Principle* 6 (Customers' interests) and the *client's best interests rule* and not vary its *platform charges* inappropriately according to provider or, for substitutable and competing *retail investment products*, the type of *retail investment product*.

Requirement to be paid through platform charges

6.1E.4 R Except as specified in ■ COBS 6.1E.6 R and ■ COBS 6.1E.7 R, a *platform service provider* must:

(1) only be remunerated for its *platform service* (and any other related services it provides), by *platform charges*; and

(2) ensure that none of its *associates* accepts any remuneration in respect of those services.

6.1E.5 G Examples of remuneration that should not be accepted by a *platform service provider* or its *associates* include (but are not limited to):

(1) a share of an annual management charge; and

(2) any payment (other than a product charge or a *platform charge*) made to a *platform service provider* in its capacity as a *retail*

investment product provider where the relevant *retail investment product* is distributed to *retail clients* by its *platform service*.

Exceptions

6.1E.6 R A *platform service provider* or its *associates* may solicit and accept payments from:

(1) a *firm*, other than a *retail investment product* provider, which is in the business of making *personal recommendations* to *retail clients* in relation to *retail investment products*; and/or

(2) a *firm*, other than a *retail investment product* provider, which is in the business of *arranging* or *dealing retail investment products* for *retail clients*.

6.1E.7 R Other than in ■ COBS 6.1E.6 R, a *platform service provider* or its *associates* may solicit and accept payments from any *firm*, including a *retail investment product* provider, which are only for:

(1) pricing error corrections;

(2) administering corporate actions;

(3) research carried out by the *platform service provider* and management information; and

(4) advertising;

provided that:

(5) the services are available to *firms* at a price which does not vary inappropriately according to *firm*;

(6) the payments are reasonable and proportionate for the service; and

(7) the payments or service could not reasonably be expected to result in a channelling of business to the *firm* other than through the normal effect of general advertising.

Distinguishing platform charges from product charges and adviser charges

6.1E.8 R A *platform service provider* must not *arrange* for a *retail client* to buy a *retail investment product* if:

(1) the product's charges are presented in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable by that *retail client*; or

(2) the *platform service provider's* charges are presented in a way that offsets or may appear to offset any product charges or *adviser charges* that are payable by the *retail client*; or

(3) the product's charges or other payments are maintained by the *retail investment product* provider at a level such that a cash rebate, other than a cash rebate permitted by ■ COBS 6.1E.10R (2), is payable to the *retail client*.

Using a platform service when advising

6.1E.9 R

A *firm* must not use a *platform service* as part of a *personal recommendation* to a *retail client* in relation to a *retail investment product* unless it has satisfied itself that the *platform service provider*, and its *associates*, only receive remuneration for business carried on in the *UK* which is permitted by the *rules* in this section.

Providing additional units or payment in cash to a retail client

6.1E.10 R

■ COBS 6.1E.4 R does not prevent a *platform service provider* receiving a share of an annual management charge from an *authorised fund manager* if the *platform service provider* passes that share on to the *retail client* in the form of:

(1) additional *units*; or

(2) cash, provided that it does not offset or appear to offset any *adviser charges* or *platform charges*.

6.1E.11 G

Examples of a cash share of an annual management charge that would not offset or appear to offset any *adviser charges* or *platform charges* are:

(1) where the *retail client* has redeemed his *retail investment product*; or

(2) where the value of the payment made to the *retail client* in each month does not exceed £1 for each fund.

6.1E.12 G

If a *platform service provider* passes a share of an annual management charge on to a *retail client* by way of additional *units* or cash, it should pay due regard to its obligations under *Principle* 7 (Communications with clients).

6.1F Using a platform service for arranging and advising

Client's best interests rule and using a platform service

6.1F.-1 R This section does not apply if the *retail client* is outside the *United Kingdom*.

6.1F.1 R A *firm* which:

(1) *arranges* for *retail clients* to buy *retail investment products* or makes *personal recommendations* to *retail clients* in relation to *retail investment products*; and

(2) uses a *platform service* for that purpose;

must take reasonable steps to ensure that it uses a *platform service* which presents its *retail investment products* without bias.

6.1F.2 G When selecting and using a *platform service* for the purpose described in ■ COBS 6.1F.1 R, a *firm* should be mindful of its duty to comply with the *client's best interests rule* and the *rules* on inducements (■ COBS 2.3.1 R, ■ COBS 2.3A.5R and ■ COBS 2.3A.15R).

6.1G Re-registration of title to retail investment products

6.1G.1 R If a *client* requests a *firm* (F) to transfer the title to a *retail investment product* which is held by F directly, or indirectly through a third party, on that *client's* behalf to another *person* (P), and F may lawfully transfer the title to that *retail investment product* to P, F must execute the *client's* request within a reasonable time and in an efficient manner.

6.1G.2 R A *firm* acting as a *registrar* should carry out a request by F for the re-registration of ownership of a *retail investment product* to P within a reasonable time.

6.1H Platform switching

Application

6.1H.1 R This section applies to a *platform service provider* in relation to the transfer, or potential transfer, of a *retail client's units*.

Definitions

6.1H.2 R In this section:

(1) "transfer" means the process of transferring a *client's investment* from existing arrangements with a *platform service provider* ("ceding platform") to separate arrangements with another *platform service provider* ("receiving platform"), irrespective of whether the assets, rights or interests comprising the *investment* are themselves transferred, or whether any of them are converted, exchanged, sold and replaced by equivalent assets, rights or interests, or realised as part of the process;

(2) "available scheme" is a *fund* in which *units* are available for investment by the *client* via both the ceding and the receiving platforms;

(3) "discounted *unit* class" is a *unit* class of an available scheme in respect of which the *fund* manager is remunerated by a lower level of charges than would otherwise apply to the *client's* investment in the available scheme;

(4) "in-specie transfer" refers to a transfer of the *client's units* which is given effect via re-registration of the ownership of the *units*, whether or not the transfer also involves a *unit* class conversion but in any event without the *fund* manager redeeming the existing *units*;

(5) "*fund* manager" is the *operator*, or, to the extent not covered by that term, the *AIFM* of the available scheme; and

(6) "*unit*" includes any right to or interest in a *unit*.

In-specie transfers and unit class conversions

6.1H.3 R Where a *client* contacts a *platform service provider* in connection with a potential transfer of their *investment* which is, or includes, *units*, the *platform service provider* must provide the *client* with:

the option of an in-specie transfer of *units* in an available scheme, provided there are no circumstances outside the control of either the ceding or the receiving platform which would prevent such transfer;

the option of, as part of the transfer, converting the *units* in an available scheme into *units* of a discounted *unit* class, provided *units* in such class are available for *investment* by the *client* via the receiving platform; and

sufficient information in good time about the options above, where they are applicable, to enable the *client* to make an informed decision about what transfer instructions to give.

6.1H.4 R If the *client* instructs the *platform service provider* to proceed with a transfer of *units*, then:

the ceding and receiving platforms must take all reasonable steps to give effect to the *client's* transfer instructions efficiently and within a reasonable time, including cooperating with and promptly providing each other with information as necessary;

if the *client* has chosen an in-specie transfer in accordance with ■ COBS 6.1H.3R(1) and a *unit* class conversion is required to enable or facilitate such transfer, the ceding platform must request the *fund* manager to carry out the relevant *unit* class conversion, and take any other reasonable steps to bring it about; and

if the *client* has chosen a discounted *unit* class in accordance with ■ COBS 6.1H.3R(2), the receiving platform must request the *fund* manager to carry out, and take any other reasonable steps to bring about, the conversion of the units into the appropriate discounted *unit* class.

6.1H.5 R The obligation to request a *unit* class conversion in ■ COBS 6.1H.4R(2) and (3) only applies to the extent the *platform service provider* is entitled to request it.

6.1H.6 R If a *platform service provider* is unable to give effect to all or part of a *client's* transfer instructions, it must contact the *client* at the earliest opportunity to request further instructions.

6.2B Describing advice services

Application

6.2B.1 R

(1) This section applies to a *firm* that provides:

(a) *investment advice* in the course of *MiFID, equivalent third country or optional exemption business* to *clients* in relation to *financial instruments* or *structured deposits*; or

(b) *investment advice* to *retail clients* in the *United Kingdom* in relation to *financial instruments*, *structured deposits* or other *retail investment products*; or

(c) *basic advice* to *retail clients* in the *United Kingdom*.

6.2B.2 R

(1) This section does not apply to a *firm* when it makes a *personal recommendation* or provides *basic advice* to an employee, if that recommendation or advice is provided under the terms of an agreement between the *firm* and that employee's employer which is subject to the rules on *consultancy charges* (■ COBS 6.1C).

(2) This section does not apply to a *firm* when it makes a *personal recommendation* to a *retail client* in relation to a *Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.

6.2B.3 G

P2P agreements are neither *financial instruments* nor *retail investment products*. This section does not apply to a *firm* when it is *advising on P2P agreements*.

6.2B.4 G

(1) This section applies in accordance with the territorial scope of the general application of this sourcebook as modified in ■ COBS 1 Annex 1.

(2) But the effect of ■ COBS 6.2B.1R(1) and ■ COBS 6.2B.6R to ■ COBS 6.2B.9R includes that:

(a) this section does not apply to a *firm* that provides *investment advice* to a *retail client* in relation to a *retail investment product* that is not a *financial instrument* if the *retail client* is outside the *United Kingdom*; and

(b) a *firm* that carries on *MiFID or equivalent third country business* with a *retail client* outside the *United Kingdom* need only have regard to *financial instruments* and *structured deposits* (and not other *retail investment products*) in conducting its assessment for the purposes of ■ COBS 6.2B.11R.

Introduction

6.2B.5 G This section transposed provisions in *MiFID* on describing advice services relating to *financial instruments* and *structured deposits* for all *clients* and reproduces a number of provisions of the *MiFID Org Regulation* as explained in ■ COBS 1.2. The requirements apply in relation to *MiFID, equivalent third country or optional exemption business*. The requirements are extended to apply to other *investment advice* and cover other *retail investment products* when the *client* is a *retail client* in the *United Kingdom*.

Interpretation of rules and guidance: relevant products

6.2B.6 R In this section a "relevant product" is:

(1) where the *client* is a *retail client* in the *United Kingdom*, a *financial instrument*, *structured deposit* or other *retail investment product*; or

(2) otherwise, a *financial instrument* or *structured deposit*.

[**Note:** article 1(4) of *MiFID*]

Interpretation of provisions marked "UK": MiFID business

6.2B.7 R A *firm* must treat obligations in relation to *financial instruments* as extending to other *retail investment products* when complying with the provisions in this section marked "UK" in the course of *MiFID business* with a *retail client* in the *United Kingdom*.

6.2B.8 G References to *financial instruments* include *structured deposits* (but not other *retail investment products*) when a *firm* is complying with the provisions in this section marked "UK" in the course of *MiFID business* with a *retail client* outside the *United Kingdom* or with a *professional client*.

[**Note:** article 1(2) of the *MiFID Org Regulation*]

Interpretation of provisions marked "UK": non-MiFID business

6.2B.9 R In relation to business that is not *MiFID business*, a *firm* must comply with provisions in this section marked "UK" as if they were *rules* but:

(1) reading references to *financial instruments* as including *structured deposits* and (if the *client* is a *retail client* in the *United Kingdom*) other *retail investment products*;

(2) (for business that is not *equivalent business of a third country investment firm* or *MiFID optional exemption business*) the *firm* need not comply with the following provisions of the *MiFID Org Regulation*:

(a) the requirement in paragraph 2 of article 52(1) of the *MiFID Org Regulation* (reproduced in ■ COBS 6.2B.32UK) not to give undue prominence to their *independent advice* services;

(b) the requirement in article 52(4) of the *MiFID Org Regulation* (reproduced in ■ COBS 6.2B.36UK) to distinguish the range of *financial instruments* issued or provided by entities not being closely linked with the *firm*; and

(c) the requirement in article 53(3)(c) of the *MiFID Org Regulation* (reproduced in ■ COBS 6.2B.29UK) that a *firm* does not allow a

natural person to provide both *independent advice* and *restricted advice*.

Interpretation: non-independent advice and restricted advice

6.2B.10 G This section refers to both "restricted advice" and "non-independent advice". These terms have the same meaning.

Firms holding themselves out as independent

6.2B.11 R If a *firm* informs a *client* that it provides *independent advice*, that *firm* must assess a sufficient range of relevant products available on the market which must:

(1) be sufficiently diverse with regard to their:

(a) type; and

(b) issuers or product providers,

to ensure that the *client's* investment objectives can be suitably met; and

(2) not be limited to relevant products issued or provided by:

(a) the *firm* itself or by entities having close links with the *firm*; or

(b) other entities with which the *firm* has such close legal or economic relationships, including contractual relationships, as to present a risk of impairing the independent basis of the advice provided.

[**Note:** article 24(7)(a) of *MiFID*]

6.2B.12 R ■ COBS 6.2B.11R does not apply to *group personal pension schemes* if a *firm* discloses information to a *client* in accordance with the *rule* on *group personal pension schemes* (■ COBS 6.1C.20AR).

6.2B.13 G The combined effect of ■ COBS 6.2B.6R and ■ COBS 6.2B.11R is that the assessment undertaken by a *firm* for the purpose of ■ COBS 6.2B.11R must:

(1) where the *client* is a *retail client* in the *United Kingdom*, include a sufficient range of *financial instruments*, *structured deposits* and other *retail investment products*; or otherwise

(2) include a sufficient range of *financial instruments* and *structured deposits*,

which in each case must meet the requirements as to diversity and scope in ■ COBS 6.2B.11R(1) and ■ (2) respectively.

Requirements for firms providing focused independent advice

6.2B.14 G A *firm* that holds itself out as providing *independent advice* may provide broad and general advice or specialist and specific advice.

[**Note:** recital 71 to the *MiFID Org Regulation*]

6.2B.15 UK

53(2)An investment firm that provides investment advice on an independent basis and that focuses on certain categories or a specified range of financial instruments shall comply with the following requirements:

(a)the firm shall market itself in a way that is intended only to attract clients with a preference for those categories or range of financial instruments;

(b)the firm shall require clients to indicate that they are only interested in investing in the specified category or range of financial instruments; and

(c)prior to the provision of the service, the firm shall ensure that its service is appropriate for each new client on the basis that its business model matches the client's needs and objectives, and the range of financial instruments that are suitable for the client. Where this is not the case the firm shall not provide such a service to the client.

[**Note:** article 53(2) of the *MiFID Org Regulation*]

6.2B.16 G

(1) ■ COBS 6.2B.15UK means that a *firm* providing *independent advice* need not provide advice on all relevant products. A *firm* may market itself as, for example, an independent stockbroker that provides *independent advice* on *shares* only. A *firm* might alternatively market itself on the basis of providing *independent advice* on a particular product market such as ethical and socially responsible investments. The requirements in ■ COBS 6.2B.15UK apply to ensure that *clients* of a *firm* that provides *independent advice* on a focused basis properly understand the nature of the advice that they will receive and that the service is appropriate.

(2) A *firm* that provides *independent advice* in respect of a relatively narrow market should not hold itself out as acting independently in a broader sense. A *firm* which specialises in providing advice in respect of a particular market might include reference to the provision of independent investment advice in its name. However, it would need to be clear in any marketing materials, and when describing its service, that it only provides *independent advice* in respect of that particular product market.

Sufficient range

6.2B.17 G

The extent of the assessment which a *firm* is required to undertake in order to meet the requirement to assess a sufficient range of relevant products will depend on:

(1) the nature of the *independent advice* service provided by the *firm* (general or focused) for the purposes of ■ COBS 6.2B.15UK;

(2) the investment objectives of the *client* (■ COBS 6.2B.11R(1)); and

(3) the *firm's* close links and relationships with product providers and issuers (■ COBS 6.2B.11R(2)).

6.2B.18 UK

53(1)Investment firms providing investment advice on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market in accordance with [■ COBS 6.2B.11R]. The selection process shall include the following elements: …

(a)the number and variety of financial instruments considered is proportionate to the scope of investment advice services offered by the independent investment adviser;

(b)the number and variety of financial instruments considered is adequately representative of financial instruments available on the market;

(c)the quantity of financial instruments issued by the investment firm itself or by entities closely linked to the investment firm itself is proportionate to the total amount of financial instruments considered; and

(d)the criteria for selecting the various financial instruments shall include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients, and shall ensure that the selection of the instruments that may be recommended is not biased.

Where such a comparison is not possible due to the business model or the specific scope of the service provided, the investment firm providing investment advice shall not present itself as independent.

[**Note**: article 53(1) of the MiFID Org Regulation]

6.2B.19 G

(1) ■ COBS 6.2B.11R does not require a *firm* providing *independent advice* to assess every relevant product available on the market before making a *personal recommendation*.

[**Note:** recital 73 to *MiFID*]

(2) Notwithstanding (1), since the assessment conducted by the *firm* must be such as to ensure the *client's* investment objectives can be suitably met, a *firm* providing *independent advice* should be in a position to advise on all types of relevant product within the scope of the market (for the purposes of ■ COBS 6.2B.15UK) on which it provides advice. When the *client* is a *retail client* in the *United Kingdom*, this means being in a position to advise on all types of *financial instrument*, *structured deposit* and other *retail investment products*.

(3) For example, a *firm* providing *independent advice* on *personal pension schemes* should be in a position to consider all *personal pension schemes*. What will constitute a sufficient range of *personal pension schemes* to be considered before providing a *client* with a *personal recommendation* will, however, depend upon the investment objectives of that *client*.

(4) A *firm* not specialising in a particular market would generally be expected to be in a position to consider all relevant product types which would be capable of meeting the investment objectives of its *clients*.

(5) If a *firm* that provides focused *independent advice* is not able to recommend a *financial instrument* that would meet the investment

objectives of a *client*, the *firm* should not provide that *client* with a *personal recommendation*. For example, if a *firm* providing *independent advice* on *shares* considered that a *client's* investment objectives would be better met by way of investment in an accumulation product, it should not provide that *client* with a *personal recommendation*.

Guidance on the independence standard

6.2B.20 G A *personal recommendation* on a relevant product that invests in a number of underlying relevant products would not of itself enable the *firm* providing the *personal recommendation* to satisfy the requirement to have considered a sufficient range of relevant products which are sufficiently diverse (■ COBS 6.2B.11R), even if the relevant product invests in a wide range of underlying *investments*.

6.2B.21 G The effect of ■ COBS 6.2B.11R(2) is that a *firm* which is subject to any form of agreement with an issuer or provider of relevant products that confines that *firm* to providing advice on relevant products issued or provided by that other *person* only will not be in a position to provide *independent advice*.

6.2B.22 G The fact that a *firm* is owned by, or owns, in whole or in part, the issuer or provider of relevant products does not prevent that *firm* from providing *independent advice*, provided that the *firm's* assessment of relevant products is:

(1) not limited to relevant products issued or provided by that related issuer or provider (■ COBS 6.2B.11R(2));

(2) proportionate; and

(3) not biased (■ COBS 6.2B.18UK).

6.2B.23 G In providing *independent advice* to a *retail client* in the *United Kingdom* a *firm* should consider financial products other than relevant products which are capable of meeting the investment needs and objectives of that *retail client*, examples of which could include national savings and investments (ns&i) products and *cash deposit ISAs*.

Use of platforms

6.2B.24 R A *firm* which:

(1) holds itself out to a *retail client* in the *United Kingdom* as acting independently; and

(2) relies upon a single *platform service* to facilitate the majority of its *personal recommendations*,

must ensure that, as appropriate, the selection of relevant products made available by the *platform service provider* is such as to enable the *firm* to satisfy the requirements of ■ COBS 6.2B.11R.

6.2B.25 G When a *firm* considers whether a *platform service provider's* selection of relevant products enables it to satisfy the requirements of ■ COBS 6.2B.11R, a *firm* should take into account any fees, commission or non-monetary benefits the *platform service provider* receives in relation to those relevant products.

Use of panels

6.2B.26 G A *firm* providing *independent advice* may satisfy the requirement to assess a sufficient range of relevant products which are sufficiently diverse (■ COBS 6.2B.11R) by using 'panels'. Such a *firm* would need to ensure that any panel is sufficiently broad in its composition to enable the *firm* to make *personal recommendations* based on an assessment of a sufficient range of relevant products available on the market which are sufficiently diverse. The *firm* would need to review the panel regularly and ensure that the *client's* investment objectives can be suitably met.

6.2B.27 G When using a panel a *firm* may exclude a certain type or class of relevant product from the panel if, after review, there is a valid reason, consistent with this section and the *client's best interests rule*, for doing so.

6.2B.28 G If a *firm* providing *independent advice* chooses to engage a third party to conduct an assessment of the relevant products available on the market, the *firm* remains responsible for complying with the requirements of ■ COBS 6.2B.11R to ensure that its advice is based on an assessment of a sufficient range of relevant products which are sufficiently diverse as to ensure that the *client's* investment objectives can be suitably met.

Requirements for firms providing both independent and restricted advice

6.2B.29 UK 53(3)An investment firm offering investment advice on both an independent basis and on a non-independent basis shall comply with the following obligations:

> (a)in good time before the provision of its services, the investment firm has informed its clients, in a durable medium, whether the advice will be independent or non-independent in accordance with [■ COBS 6.2B.33R] and the relevant implementing measures;
>
> (b)the investment firm has presented itself as independent for the services for which it provides investment advice on an independent basis; and
>
> (c)the investment firms has adequate organisational requirements and controls in place to ensure that both types of advice services and advisers are clearly separated from each other and that clients are not likely to be confused about the type of advice that they are receiving and are given the type of advice that is appropriate for them. The investment firm shall not allow a natural person to provide both independent and non-independent advice.

[**Note:** article 53(3) of the *MiFID Org Regulation*]

6.2B.30 G A *firm* that offers an unlimited range of *regulated mortgage contracts*, or gives advice in relation to *contracts of insurance* on the basis of a fair

analysis, but offers *restricted advice* on relevant products should not hold itself out as acting independently for its business as a whole, for example by holding itself out as an independent financial adviser. However, it may disclose that it offers an unlimited range of *regulated mortgage contracts* or gives advice in relation to *contracts of insurance* on the basis of a fair analysis provided it makes clear in accordance with the *fair, clear and not misleading rule* (■ COBS 4.2.1R) that it provides *restricted advice* on relevant products.

6.2B.31 G A *firm* that provides *basic advice* on *stakeholder products* may still use the facilities and stationery it uses for other business in accordance with the rule on basic advice on stakeholder products: other issues (■ COBS 9.6.17 R (2)).

6.2B.32 UK 52(1)Where advice is offered or provided to the same client on both an independent and non-independent basis, investment firms shall explain the scope of both services to allow investors to understand the differences between them and not present itself as an independent investment adviser for the overall activity. Firms shall not give undue prominence to their independent investment advice services over non-independent investment services in their communications with clients.

[**Note:** article 52(1) of the *MiFID Org Regulation*]

Disclosing the nature of advice provided

6.2B.33 R

(1) A *firm* must disclose to a *client*, in good time before the provision of *investment advice* or *basic advice*:

(a) whether its advice will be:

(i) independent advice; or

(ii) restricted advice;

(b) whether the advice will be based on a broad or more restricted analysis of different types of relevant products; and

(c) where the advice will be *restricted advice*, whether the range will be limited to relevant products issued or provided by entities having close links with the *firm* or any other legal or economic relationships, such as contractual relationships, so as to present a risk of impairing the independent basis of the advice provided.

[**Note:** article 24(4)(a)(i) and (ii) of *MiFID*]

(2) A *firm* must include the term "independent advice" or "restricted advice" or both, as relevant, in the disclosure.

6.2B.34 R

(1) A *firm* must provide the information required by ■ COBS 6.2B.33R in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* that is being offered and, consequently, to take investment decisions on an informed basis.

(2) That information may be provided in a standardised format.

[**Note:** article 24(5) of *MiFID*]

6.2B.35 UK

52(1)Investment firms shall explain in a clear and concise way whether and why investment advice qualifies as independent or non-independent and the type and nature of the restrictions that apply, including, when providing investment advice on an independent basis, the prohibition to receive and retain inducements.

[**Note:** article 52(1) of the *MiFID Org Regulation*]

6.2B.36 UK

52(2)Investment firms providing investment advice, on an independent or non-independent basis, shall explain to the client the range of financial instruments that may be recommended, including the firm's relationship with the issuers or providers of the instruments.

52(3)Investment firms shall provide a description of the types of financial instruments considered, the range of financial instruments and providers analysed per each type of instrument according to the scope of the service, and, when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis and the factors taken into consideration in the selection process used by the investment firm to recommend financial instruments, such as risks, costs and complexity of the financial instruments.

52(4)When the range of financial instruments assessed by the investment firm providing investment advice on an independent basis includes the investment firm's own financial instruments or those issued or provided by entities having close links or any other close legal or economic relationship with the investment firm as well as other issuers or providers which are not linked or related, the investment firm shall distinguish, for each type of financial instrument, the range of the financial instruments issued or provided by entities not having any links with the investment firm.

[**Note:** article 52(2), (3) and (4) of the *MiFID Org Regulation*]

Medium of disclosure

6.2B.37 G

A *firm* should provide the disclosure information required by the *rule* on describing the breadth of a *firm's* advice service (■ COBS 6.2B.33R) in a *durable medium* or through a website (if it does not constitute a *durable medium*) provided the *website conditions* are satisfied.

Additional oral disclosure for firms providing restricted advice

6.2B.38 R

If a *firm* provides *restricted advice* and engages in spoken interaction with the *retail client*, in addition to the disclosure required by ■ COBS 6.2B.33R, a *firm* must disclose orally in good time before the provision of its *investment advice* that it provides *restricted advice* and the nature of that restriction.

6.2B.39 G

Examples of statements which would comply with ■ COBS 6.2B.38R include:

(1) "I am a [Firm X] adviser offering restricted advice, which means that my advice is restricted to advice on [Firm X] [products/stakeholder products] only"; or

(2) "I am a [Firm X] adviser offering restricted advice, which means that my advice is restricted to advice on [products/stakeholder products] from a limited number of companies that [Firm X] has selected".

Record keeping

6.2B.40 G *Firms* are reminded of the general record keeping requirements in ■ SYSC 3.2 and ■ SYSC 9. A *firm* should keep appropriate records of the disclosures required by this section.

Systems and controls

6.2B.41 G

(1) *Firms* are reminded of the systems and controls requirements in *SYSC*.

(2) A *firm* providing *restricted advice* should take reasonable care to establish and maintain appropriate systems and controls to ensure that if there is no relevant product in the *firm's* range of products which meets the investment needs and objectives of the *client*, no *personal recommendation* should be made.

(3) A *firm* specialising in a particular market should take reasonable care to establish and maintain appropriate systems and controls to ensure that it does not make a *personal recommendation* if there is a relevant product outside the market on which it provides *investment advice* which would meet the investment needs and objectives of the *client*.

6.4 Disclosure of charges, remuneration and commission

Application

6.4.1 R This section applies to a *firm* when it sells or *arranges* the sale of a *packaged product* to a *retail client* and the *firm's* services to sell or *arrange* are not in connection with the provision of a *personal recommendation*.

6.4.2 G [deleted]

Disclosure of commission (or equivalent) for packaged products

6.4.3 R

(1) If a *firm* sells or *arranges* the sale of a *packaged product* to a *retail client*, and subsequently if the *retail client* requests it, the *firm* must disclose to the *client* in *cash terms*.

(a) any *commission* receivable by it or any of its *associates* in connection with the transaction;

(b) if the *firm* is also the *product provider*, any *commission* or *commission equivalent* payable in connection with the transaction; and

(c) if the *firm* or any of its *associates* is in the same *immediate group* as the *product provider*, any *commission equivalent* in connection with the transaction.

(2) Disclosure "in *cash terms*" in relation to *commission* does not include the value of any indirect benefits listed in the table at ■ COBS 2.3.15 G.

(3) In determining the amount to be disclosed as *commission equivalent*, a *firm* must put a proper value on the cash payments, benefits and services provided to its *representatives* in connection with the transaction.

(4) This *rule* does not apply if:

(a) the *firm* is acting as an *investment manager*; or

(b) the *retail client* is not present in the *United Kingdom* at the time of the transaction; or

(c) the *firm* provides the *client* with a *key features document*, a *key investor information document*, an *EEA key investor information document* or a *NURS-KII document*, in accordance with ■ COBS 14, provided that the *firm* discloses to the *client* the actual amount or value of *commission* or *equivalent* within five *business days* of effecting the transaction.

(5) If the terms of a *packaged product* are varied in a way that results in a material increase in *commission* or *commission equivalent*, a *firm* must disclose to a *retail client* in writing any consequent increase in *commission* or *equivalent* receivable by it in relation to that transaction.

6.4.4 G Where a *firm* is required to disclose the value of *commission equivalent*, the value will be at least as high as the amount of any *commission*.

6.4.4A R If the *firm* or its *associate* is the *pure protection contract insurer*, it may comply with ■ COBS 6.4.3R (1)(b) and ■ (c) by disclosing to the *consumer* an *indicative adviser charge* as an alternative to a *commission equivalent*.

6.4.4B R The *indicative adviser charge* must be at least reasonably representative of the cost of the services associated with making the *personal recommendation* in relation to the *pure protection contract*.

6.4.4C G An *indicative adviser charge* is likely to be reasonably representative of the cost of the services associated with making the *personal recommendation* if:

(1) the total expected costs associated with making a *personal recommendation* and distributing the *pure protection contract* will:

(a) be recovered through *indicative adviser charges*; and

(b) not be recovered by charges for, or profits from, other services (such as manufacturing and administering the *pure protection contract*);

(2) *indicative adviser charges* are reasonably capable of being self-supporting over a period of five years, or longer where this can be shown to be consistent with the *firm's* established payback period; and

(3) the *personal recommendation* and any related services were to be provided by an unconnected *firm*, the level of the *indicative adviser charge* would be appropriate in the context of the service being provided by an unconnected *firm*.

6.4.4D G (1) In ■ COBS 6.4.4CG(1), the total costs associated with making a *personal recommendation* and distributing the *pure protection contract* include attributable indirect costs of the *firm's* (or *group's*) wider business such as *firm* or *group* overheads.

(2) In ■ COBS 6.4.4CG(2), the *firm's* established payback period is the period of time in which the cash outflows associated with an investment made by the *firm* (or *group*) are expected to be recovered from the cash inflows generated by the *adviser charges*.

6.4.5 R (1) A *firm* must make the disclosure required by the *rule* on disclosure of *commission* or *equivalent* (■ COBS 6.4.3 R) as close as practicable to the time that it sells or *arranges* the sale of a *packaged product*.

(2) The *firm* must make the disclosure:

(a) in a *durable medium*; or

(b) when a *retail client* does not make a written application to enter into a transaction, orally. In these circumstances, the *firm* must give written confirmation as soon as possible after the date of the transaction, and in any event within five *business days*.

6.4.6 E

(1) When determining the value of cash payments, benefits and services under the *rule* on disclosure of *commission equivalent* (■ COBS 6.4.3 R), a *firm* should follow the provisions of ■ COBS 6 Annex 6.

(2) Compliance with this *evidential provision* may be relied on as tending to establish compliance with ■ COBS 6.4.3 R; and

(3) Contravention of this *evidential provision* may be relied on as tending to establish contravention of ■ COBS 6.4.3 R.

Guidance on disclosure requirements for packaged products

6.4.7 R

A *firm* must not enter into an arrangement to pay *commission* other than to the *firm* responsible for a sale, unless:

(1) the *firm* responsible for the sale has passed on its right to receive the *commission* to the recipient; or

(2) [deleted]

(3) the *commission* is paid following the sale of a *packaged product* by the *firm* in response to a *financial promotion* communicated by that *firm* to a *client* of the recipient *firm*; or

(4) the arrangement is with a *firm* in the same *immediate group*.

6.4.8 G

A disclosure made under this section should indicate the timing of any payment. For example, if a *firm* exchanges its right to future *commission* payments for a lump sum, whether by way of a loan or other commercial arrangement, it should disclose the amount of *commission* receivable by it that has been exchanged for the lump sum.

6.4.9 G

The *rules* in this section build on the disclosure of fees, commission and non-monetary benefits made under the rules on inducements (■ COBS 2.3.1 R, ■ COBS 2.3A.5R, ■ COBS 2.3A.6R, ■ COBS 2.3A.15R and ■ COBS 2.3A.16R).

6.4.10 G

If the precise rate or value of *commission* or *equivalent* is not known in advance, the *firm* should estimate the rate likely to apply to the *representative* in respect of the transaction.

6.4.11 G

Commission or equivalent disclosure statements: content and wording

A *firm* should consider including the following in its written statement of *commission*:

(1) Amounts or values of *commission* rounded as appropriate to help the *client* understand the document (for example, large amounts might be rounded to three significant figures).

Commission or equivalent disclosure statements: content and wording		
(2)	The names of the *firms* involved in paying and receiving *commission* or *commission equivalent*.	
(3)	A plain language description of whether remuneration takes the form of *commission* or *commission equivalent*. *Commission* equivalent could, for example, be described as "remuneration and services received from XYZ Ltd".	
(4)	The timing of payments and period over which they are paid.	
(5)	For payments relating to the *client's* fund, examples of how much money might be taken, such as:	
	(a)	where the *commission* or *equivalent* is on an increasing basis, the amount to be taken in the first and tenth year in which it is paid; or
	(b)	where the *commission* or *equivalent* is a percentage of the fund, the amount that would taken if the fund was worth a certain value and the amount that would be taken if the fund was worth twice that value.

Services and costs disclosure document described in COBS 6.3.7G(1) [deleted]

Combined initial disclosure document described in COBS 6.3, ICOBS 4.5 and MCOB 4.4A.20G [deleted]

[deleted]

[deleted]

[deleted]

Calculating commission equivalent

This table forms part of ■ COBS 6.4.6 E.

Calculating commission equivalent		
This table sets out the basis on which the *firm* should determine the value of cash payments, benefits and services to be disclosed as *commission equivalent*. Benefits and services, as set out in parts B and C below, need be included only if their value is such that they could not be provided to a *firm* as a non-monetary benefit listed in the table in COBS 2.3.15 G. The result of the calculation should be that the amounts disclosed as *commission equivalent* are, as far as possible, the same as the amounts and value of *commission* which would be paid in a corresponding sale.		
	Part A: Cash payments	
1.	These cover all payments by a *firm* to a *representative*, *appointed representative* or, where applicable, a *tied agent*, or a *firm* in the same *immediate group* in relation to a transaction in a *packaged product*. This includes bonus payments, manager's overrides, extra earnings from other transactions and other payments conditional on amounts of new business.	
2.	In determining the amounts to be included in the calculation, a *firm* should have regard to the following:	
	(a)	when the precise rate of *commission equivalent* is not known in advance (for example, if retrospective volume overrides apply), the *firm* should estimate the rate likely to apply to the *representative* in question. When an identical *commission equivalent* scale applies to all *representatives* (although they might earn differing percentages of it), the same average amount of *commission equivalent* (and the value of other benefits and services) in respect of identical transactions may be disclosed, regardless of the percentage of the scale paid to each individual *representative*. Averaging should not be used for *appointed representatives*, or, where applicable, *tied agents*.
	(b)	all credits to an account from which periodic withdrawals may be made should be included.
	(c)	when a payment is made before the *firm* receives the *premium* or the investment monies to which it relates (for example, indemnity *commission equivalent*), it should be included as being received at the time of payment. *Firms* that wish to explain this arrangement to the *clients* are free to do so, provided this does not detract from the required disclosure.
	(d)	when the *firm* arranges for a third party to make a payment to a *representative* in exchange for the income stream to which the *representative* is entitled, or to make a loan to the *representative* on the security or expectation of future payments from the *firm*, this should be treated as if it were a payment from the *firm* at the time of the transaction.
	(e)	when a *firm* provides, or arranges for a third party to provide, a loan to a *representative*, on the security of, or in the expectation of, future payments from the firm, the amounts to be included are the payments to the *representative* on which the provision of the loan is based, as if they were received at the time the transaction was effected, irrespective of their actual timing.
	(f)	when an agent is employed and remunerated by the *firm's appointed representative*, or, where applicable, *tied agent*, the payments to be included should be those made by the *firm* to the *appointed representat-*

Calculating commission equivalent

ive or *tied agent*, not those made by the *appointed representative* or *tied agent* to its own agent.

Part B: Benefits

3. Benefits include the cost to the *firm* of all non-monetary benefits provided by it to a *representative*. A benefit should be included whether or not the *representative* is liable to income tax on it and whether it is chargeable to tax. Examples of benefits include the use of a car, attendance at conferences, subsidised loans, contributions to *pension schemes*, national insurance contributions, and the value of *share option* (taking into account any discount on issue and assuming that the *shares* in question grow at a reasonable rate in line with other *investments*).

Part C: Services

4. Services include benefits which are not indirect benefits within the table in COBS 2.3.15 G.

5. The following services should be included:

(a) office accommodation and equipment, including telephone, photocopying and fax;

(b) loans where a commercial rate of interest is not charged, including *commission equivalent* advances overdue for repayment;

(c) general stationery and mailing or distribution costs;

(d) computer hardware and software (except software which specifically relates to the *firm's packaged product*, such as software used for producing illustrations, *projection* and product information);

(e) clerical and administrative support;

(f) business insurance cover, including professional indemnity and fidelity guarantee;

(g) recruitment;

(h) compliance monitoring;

(i) *client* services;

(j) business planning services;

(k) line management.

6. To put a value on these services, the following costs should be included:

(a) all overheads attributable to a particular cost item (for example, the cost of a compliance official);

(b) salary costs pro rata if individuals are only engaged part-time on relevant business;

(c) rent and associated premises costs at an appropriately reduced rate if the premises are also used for other business activities;

(d) only that proportion of the cost of lead generation promotions attributable to the generation of relevant business (but including the placing of any *financial promotion*, and its mailing or provision of access to third party *clients*);

(e) only the marginal additional compliance costs of ensuring that *representatives* and their support and training material comply with relevant *rules*;

(f) the commercial value of a service which is the use of an asset owned by the *firm* (for example in the case of a property, its full market rent);

(g) in respect of *appointed representative*, or, where applicable *tied agent*, the costs of any promotion in a newspaper or elsewhere and the provision of *representative*-specific literature in connection with a *financial promotion*;

Calculating commission equivalent

(h) in respect of a *firm* in the same *immediate group* and connected *appointed representatives* or, where applicable, *tied agents*, where the name of the company is included in the *financial promotion*, the costs of any promotion in a newspaper or elsewhere and the provision of literature specific to the *representative* in connection with a *financial promotion*.

7. The following costs should be excluded:

(a) the cost of corporate awareness advertising;

(b) training costs;

(c) costs of developing and maintaining computer systems for the provision of *projections* of benefits, *client*-specific *key features documents* or other product information;or other product information;

(d) costs of compensating *clients*;

(e) the costs of head office and branch level management and support, other than payments to *managers* falling under Part 1, for *representatives*, if these services could also be provided to a *firm* not in the same *immediate group*, for example, broker consultants and 'inspectors'.

Part D: Calculation methodology

8. Estimating commission equivalent

The cost of benefits and services should normally be based on the most recent relevant experience of the *firm*, except if the *firm* has grounds to believe that the *commission equivalent* for the period concerned will be higher or lower than that implied by the experience or no such experience is available. In such a case, the estimate should be based on and evidenced by business plans which the *firm* is satisfied are achievable.

9. *Firms* that receive or expect to receive:

(a) *commission* in respect of *packaged products* which are not its own products or the products of a *product provider* who is in the same *immediate group*; and

(b) *commission equivalent* in respect of its own products;

must ensure that the costs and benefits attributed to these products do not exceed the amounts that can be financed from that *commission*.

Construction of commission equivalent scales

10. The total costs of cash payments, benefits and services should be assessed and the normal approach is to split them into new business costs and after sale servicing costs. The costs of each of these functions should be assessed directly in relation to the work carried out by the *representatives*.

11. (a) The total *commission equivalent* costs identified in 10 should be spread across the business using a new business *commission equivalent* scale and a servicing *commission equivalent* scale respectively.

(b) The *commission equivalent* scales should distinguish between products for which the *commission equivalent* of *representatives* is likely to be different.

12. If the *representative's commission equivalent* includes a cash payment related to volume and/or value of the transactions sold (which payment must be in accordance with the *client's best interest rule*), the following method would be appropriate:

(a) The payment scales should be grossed up by new business uplift factors or servicing uplift factors as appropriate to reflect the cost of benefits and services. The grossed up scales represent the new business and servicing *commission equivalent* scales, and are applied to each contract to derive the *commission equivalent* to be disclosed.

Calculating commission equivalent

(b) If servicing costs are expected to be incurred in any year in which no servicing payments are to be made on a contract, disclosure should still be made, for example by using a technique similar to that described in 14.

13. (a) When a *representative* receives a salary, or other payment unrelated to volume or sales:

(i) this should be amalgamated with the cost of benefits and services; and

(ii) the total costs should be apportioned over individual transactions in a way that reflects the value of a contract to a *firm* or the *firm's immediate group*.

(b) If a *firm* is a distributor for a *product provider* within the same *immediate group*, the *firm* must apportion total costs over individual transactions in a way that reflects the value of the contract to the *firm's immediate group*.

14. If a *representative* agrees to forgo part of his or her normal payment to improve the terms of the contract, the disclosure may be reduced in such a way that fairly reflects the overall effect of the amount foregone.

15. The *firm* should review the *commission equivalent* scales if at any time it becomes aware that the *commission equivalent* figures have become misleading. A review should take place at least annually.

Payments to associates

16. If a *firm* pays *commission equivalent* to another *firm* in the same *immediate group*, or an *appointed representative* or, where applicable *tied agent*, which is an *associate* of the *firm*, it should ensure that the calculation of the sum to be disclosed is the higher of:

(a) all payments, benefits and services provided to the *firm* or *appointed representative* or *tied agent*, from whatever source, plus an additional allowance for profit of 15% - unless the *firm* can demonstrate that another figure (higher or lower) is more appropriate; and

(b) the cash payments actually paid by the *firm*, plus the value of services provided.

Chapter 7

Insurance distribution

7.1 Application

7.1.1 R This chapter applies to a *firm* carrying on *insurance distribution activities* in relation to a *life policy*, but only if the *State of the commitment* is an the *United Kingdom*.

[**Note:** articles 1, 20(1) and 23 of the *IDD*]

7.3 Additional insurance distribution obligations

Demands and needs

7.3.1 R

(1) Prior to the conclusion of a *life policy*, a *firm* must specify, on the basis of the information obtained from the *client*, the demands and needs of that *client*.

(2) The details must be modulated according to the complexity of the *life policy* proposed and the type of *client*.

(3) A statement of the demands and needs must be communicated to the client prior to the conclusion of a *life policy*.

(4) This *rule* and ■ COBS 7.3.4R do not apply when a *firm* makes a *personal recommendation* in relation to a *life policy*.

[**Note:** first paragraph of article 20(1) and article 20(2) of the *IDD*]

7.3.2 G

Firms are reminded that they are obliged to take reasonable steps to ensure that a *personal recommendation* is suitable for, and consistent with the insurance demands and needs of, the *client* and that, whenever a *personal recommendation* relates to a *life policy*, a *suitability report* is required (see ■ COBS 9 or ■ 9A).

7.3.3 G

A *firm* may obtain information from the *client* in a number of ways including, for example, by asking the *client* questions in person or by way of a questionnaire prior to any *life policy* being proposed.

7.3.4 R

When proposing a *life policy* a *firm* must ensure it is consistent with the client's insurance demands and needs.

[**Note:** recital 44 to, and second paragraph of article 20(1) of, the *IDD*]

7.3.5 R

The sale of a *life policy* must always be accompanied by a demands and needs test on the basis of information obtained from the *client*.

[**Note:** recital 44 to, and article 20(1) of, the *IDD*]

Distribution of connected contracts through exempt persons

7.3.6 R

(1) Where an *insurance distributor* is distributing through a *person* relying on the connected contracts exemption in article 72B of the *Regulated Activities Order*, the *insurance distributor* must ensure that the requirements in (2) are met.

(2) The requirements referred to in (1) are:

(a) ■ SYSC 19F.2 (Remuneration and insurance incentives)

(b) ■ COBS 4 (Communicating with clients, including fair financial promotions);

(c) ■ COBS 2.1.1R (client's best interests);

(d) ■ COBS 6.1ZA.7AR(1)(a) and (c) (Status disclosure general information: insurance distribution);

(e) ■ COBS 7.3.1R to ■ COBS 7.3.5R (Additional insurance distribution obligations: demands and needs); and

(f) ■ COBS 6.1ZA.16AR to ■ 6.1ZA.16DR (cross-selling).

[**Note:** article 1(4) of the *IDD*]

7.3.7 G To comply with the relevant chapter of *SYSC* or *Principle* 3, an *insurance distributor* will need to have appropriate arrangements in place to ensure compliance with ■ COBS 7.3.6R.

7.4 Insurance distribution: Means of communication to clients

7.4.1 R This section applies to all information required to be provided to a *client* in ■ COBS 7.3 and where it is stated to apply in other sections or chapters.

Means of communication to customers: Non-telephone sales

7.4.2 R

(1) A *firm* must communicate information to a *client* using any of the following:

(a) paper; or

(b) a *durable medium* other than paper; or

(c) a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.

(2) The *firm* must communicate the information in (1):

(a) in a clear and accurate manner, comprehensible to the *client*;

(b) in an official language of the *State of the commitment* or in any other language agreed by the parties; and

(c) free of charge.

[**Note:** article 23(1), (2), (4) and (5) of the *IDD*]

7.4.3 R Where the information is communicated using a *durable medium* other than paper or by means of a website, the *firm* must, upon request and free of charge, also send the *customer* a paper copy.

[**Note:** article 23(3) of the *IDD*]

Means of communications to clients: Telephone sales

7.4.4 R In the case of telephone selling:

(1) the information must be given in accordance with the distance marketing disclosure *rules* (see ■ COBS 5); and

(2) if prior to the conclusion of the contract the information is provided:

(a) orally; or

(b) on a *durable medium* other than paper,

the *firm* must also provide the information to the *client* in accordance with ■ COBS 7.4.2R and ■ COBS 7.4.3R immediately after the conclusion of the *life policy*.

[**Note:** article 23(7) of the *IDD*]

Chapter 8

Client agreements (non-MiFID provisions)

8.1 Client agreements: non-MiFID designated investment business

Application

8.1.1 R

(1) This chapter applies to a *firm* in relation to *designated investment business* carried on for a *retail client*.

(2) [deleted]

(3) But this chapter does not apply to:

(a) a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*; or

(b) subject to (3A), a *firm* to the extent that it is *effecting contracts of insurance* in relation to a *life policy* issued or to be issued by the *firm* as principal.

(3A) ■ COBS 8.1.4R and ■ COBS 8.1.5R apply to a *firm* carrying on *insurance distribution* in relation to *insurance-based investment products* for any *client*.

Providing a client agreement

8.1.2 R

If a *firm* carries on *designated investment business*, other than *advising on investments* or *advising on conversion or transfer of pension benefits*, with or for a new *retail client*, the *firm* must enter into a written basic agreement, on paper or other *durable medium*, with the *client* setting out the essential rights and obligations of the *firm* and the *client*.

8.1.3 R

(1) A *firm* must, in good time before a *client* is bound by any agreement relating to *designated investment business* or before the provision of those services, whichever is the earlier, provide that *client* with:

(a) the terms of any such agreement; and

(b) the information about the *firm* and its services relating to that agreement or to those services required by ■ COBS 6.1.4 R, including information on communications, conflicts of interest and authorised status.

(2) A *firm* must provide the agreement and information in a *durable medium* or, where the *website conditions* are satisfied, otherwise via a website.

(3) A *firm* may provide the agreement and the information immediately after the *client* is bound by any such agreement if:

(a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from doing so; and

(b) if the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if he were a *consumer*.

(4) (a) A *firm* must notify a *client* in good time about any material change to the information provided under this *rule* which is relevant to a service that the *firm* is providing to that *client*.

(b) A *firm* must provide the notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

Record keeping: client agreements

8.1.4 R

(1) A *firm* must establish a record that includes the document or documents agreed between it and a *client* which set out the rights and obligations of the parties, and the other terms on which it will provide services to the *client*.

(2) The record must be maintained for:

(a) [deleted]

(b) unless (c) applies, at least the duration of the relationship with the *client*; or

(c) in the case of a record relating to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely.

[**Note:** article 30(4) of the *IDD*]

8.1.5 R

For the purposes of this chapter, a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.

[**Note:** article 30(4) of the *IDD*]

8.1.6 G

When considering its approach to client agreements, a *firm* should be aware of other obligations in the *Handbook* which may be relevant. These include the *fair, clear and not misleading rule*, the *rules* on disclosure of information to a *client* before providing services, the *rules* on distance communications (principally in ■ COBS 2.2, ■ 5, ■ 6 and ■ 13) and the provisions on record keeping (principally in ■ SYSC 3, for *insurers* and *managing agents*, and ■ SYSC 9, for other *firms*.

Chapter 8A

Client agreements (MiFID provisions)

8A.1 Client agreements (MiFID, equivalent third country or optional exemption business)

Application and purpose provisions

8A.1.1 R This chapter applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

8A.1.2 R Provisions in this chapter marked "UK" apply to *MiFID optional exemption firms* as if they were *rules*.

8A

8A.1.3 G In order to provide legal certainty and enable clients to better understand the nature of the services provided, investment firms that provide investment or ancillary services to clients should enter into a written basic agreement with the client, setting out the essential rights and obligations of the firm and the client.

[**Note:** recital 90 to the *MiFID Org Regulation*]

Providing a client agreement: retail and professional clients

8A.1.4 UK Investment firms providing any investment service or the ancillary service referred to in paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to a client after the date of application of this Regulation shall enter into a written basic agreement with the client, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client. Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed.

(a) a description of the services, and where relevant the nature and extent of the investment advice, to be provided;

(b) in case of portfolio management services, the types of financial instruments that may be purchased and sold and the types of transactions that may be undertaken on behalf of the client, as well as any instruments or transactions prohibited; and

(c) a description of the main features of any services referred to in paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to be provided, including where applicable the role of the firm with respect to corporate actions relating to client instruments and the terms on which securities financing transactions involving client securities will generate a return for the client.

[**Note:** article 58 of the *MiFID Org Regulation*]

General requirement for information to clients

8A.1.5 UK

46(1) Investment firms shall, in good time before a client or potential client is bound by any agreement for the provision of investment services or ancillary services or before the provision of those services, whichever is the earlier to provide that client or potential client with the following information:

(a) the terms of any such agreement;

(b) the information required by Article 47 relating to that agreement or to those investment or ancillary services.

[**Note:** article 46(1) of the *MiFID Org Regulation*]

8A.1.6 UK

46(2) Subject to paragraph 2A, investment firms must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

46(2A)Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion:

(a)the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and

(b)subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:

(i)electronic format; or

(ii)where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.

46(2B) The conditions referred to in paragraph 2A(b) are:

(a)the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and

(b)the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.

[**Note:** article 46(2), (2A) and (2B) of the *MiFID Org Regulation*]

8A.1.7 UK

46(3) The information referred to in paragraphs 1 to 2B shall be provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

[**Note:** article 46(3) of the *MiFID Org Regulation*]

Avoiding duplicate information

8A.1.8 G

(1) Articles 47 to 50 of the *MiFID Org Regulation* require a *firm* to provide a *client* with information about:

8A

(a) the *firm* and its services for *clients* and potential *clients* (including information on communications, conflicts of interest and authorised status);

(b) financial instruments;

(c) safeguarding of *client financial instruments* or *client* funds; and

(d) costs and associated charges.

(2) Provided the information referred to in (1) is communicated to a *client* in good time before the provision of the service, a *firm* does not need to provide it either separately or by incorporating it in a *client* agreement.

(3) The requirements for *firms* to provide *clients* with the information referred to in (1) are set out at ■ COBS 6.1ZA.

[**Note:** recital 84 to *MiFID*]

Record keeping: client agreements

8A

8A.1.9 R A *firm* must establish a record that includes the document or documents agreed between it and a *client* which set out the rights and obligations of the parties, and the other terms on which it will provide services to the client.

[**Note:** article 25(5) of *MiFID*]

8A.1.10 UK 73 Records which set out the respective rights and obligations of the investment firm and the client under an agreement to provide services, or the terms on which the firm provides services to the client, shall be retained for at least the duration of the relationship with the client.

[**Note:** article 73 of the *MiFID Org Regulation*]

8A.1.11 R For the purposes of this chapter, a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.

[**Note:** article 25(5) of *MiFID*]

8A.1.12 G When considering its approach to *client* agreements, a *firm* should be aware of other obligations in the *Handbook* which may be relevant. These include the *fair, clear and not misleading rule*, the *rules* on disclosure of information to a *client* before providing services (principally in ■ COBS 2.2A, ■ 6.1ZA and ■ 13) and the provisions on record keeping (principally in ■ SYSC 9).

Chapter 9

Suitability (including basic advice) (other than MiFID and insurance-based investment products)

9.1 Application and purpose provisions

Application

9.1.1 R This chapter applies to a *firm* which:

(a) makes a *personal recommendation* to a *retail client* in relation to a *designated investment*;

(b) *manages investments* of a *retail client* of the *firm*;

(c) manages the assets of an *occupational pension scheme*, *stakeholder pension scheme* or *personal pension scheme*,other than in relation to its *MiFID, equivalent third country or optional exemption business* or to an *insurance-based investment product*.

9.1.1A G ■ COBS 9A contains suitability requirements which apply in respect of *insurance-based investment products*, or in respect of a *firm's MiFID, equivalent third country or optional exemption business* involving the provision of *investment advice* or *portfolio management*.

Providing basic advice on a stakeholder product

9.1.2 R If a *firm* to which this chapter applies makes a *personal recommendation* in relation to a *stakeholder product* it may choose to give *basic advice* under the *rules* in section 9.6 of this chapter instead of the *rules* in the remainder of this chapter.

P2P agreements

9.1.3 R [deleted]

9.1.3A G This chapter does not apply to a *firm* which *manages investments* when that *firm* takes a decision to trade for a *client* and that decision relates to a *P2P agreement*. This is because the *regulated activity* of *managing investments* does not extend to the management of assets where those assets are *P2P agreements*.

9.1.4 R [deleted]

Life policies for professional clients

9.1.5 R If the *firm* makes a *personal recommendation* to a *professional client* to take out a *life policy* which is not an *insurance-based investment product*, this chapter applies, but only those *rules* which implemented the requirements of the *IDD*.

9.1.6 G If a *rule* implemented a requirement of the *IDD*, a Note ("**Note:**") follows the *rule* indicating which provision was being implemented. ■ COBS 2.1 (acting honestly fairly and professionally), COBS 2.6 (additional insurance distribution obligations, ■ COBS 4 (communicating with clients), ■ COBS 6 (information about the firm, its services and remuneration) and ■ COBS 14 (product information) contains contain further *rules* which implemented the *IDD*

9.1.7 G [deleted]

Related rules

9.1.8 G For a *firm* making *personal recommendations* in relation to pensions:

(1) ■ COBS 19.1 contains additional provisions relevant to assessing suitability and the contents of suitability reports for *full pension transfer or conversion advice*; and

(2) ■ COBS 19.1A contains additional provisions relevant to assessing suitability and the contents of *suitability reports* for *abridged advice*.

9.1.9 G ■ COBS 6.1ZA (Insurance mediation) contains requirements relating to the basis on which certain recommendations may be made, including requirements relating to fair analysis and range and scope.

9.2 Assessing suitability

[**Note:** The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf]

Assessing suitability: the obligations

9.2.1 R

(1) A *firm* must:

(a) take reasonable steps to ensure that a *personal recommendation*, or a decision to trade, is suitable for its *client*; and

(a) ensure that any *life policy* proposed is consistent with the *client's* insurance demands and needs.

(2) When making the *personal recommendation* or *managing* his *investments*, the *firm* must obtain the necessary information regarding the *client's*:

(a) knowledge and experience in the investment field relevant to the specific type of *designated investment* or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for the *client* and for a *life policy*, to propose a contract that is consistent with the *client's* insurance demands and needs.

[**Note:** recital 44 to, and second paragraph of article 20(1), of the *IDD*]

9.2.1A G

A *client's* insurance demands and needs are those which would need to be obtained under ■ COBS 7.3 where a contract is sold without the provision of a *personal recommendation*.

9.2.2 R

(1) A *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a *client* must include, where relevant, information on the length of time for which

he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a *client* must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

9.2.3 R The information regarding a *client's* knowledge and experience in the investment field includes, to the extent appropriate to the nature of the *client*, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

(1) the types of service, transaction and *designated investment* with which the *client* is familiar;

(2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the *client*.

9.2.4 R A *firm* must not encourage a *client* not to provide information for the purposes of its assessment of suitability.

Reliance on information

9.2.5 R A *firm* is entitled to rely on the information provided by its *clients* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

Insufficient information

9.2.6 R If a *firm* does not obtain the necessary information to assess suitability, it must not make a *personal recommendation* to the *client* or take a decision to trade for him.

9.2.7 G Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *client's best interests rule* and any 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 and insurance-based investment products provisions)).

9.2.8 R [deleted]

Friendly society life policies

9.2.9 R

(1) When recommending a small *friendly society life policy*, a *firm*, for the purpose of assessing suitability, need only obtain details of the net income and expenditure of the *client* and his dependants.

(2) A *friendly society life policy* is small if the *premium*:

(a) does not exceed £50 a year; or

(b) if payable weekly, £1 a week.

(3) The *firm* must keep for five years a record of the reasons why the recommendation is considered suitable.

9.3 Guidance on assessing suitability

9.3.1 G

(1) A transaction may be unsuitable for a *client* because of the risks of the *designated investments* involved, the type of transaction, the characteristics of the order or the frequency of the trading.

(2) In the case of *managing investments*, a transaction might also be unsuitable if it would result in an unsuitable portfolio.

[deleted]

Churning and switching

9.3.2 G

(1) A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.

(2) A *firm* should have regard to the *client's* agreed investment strategy in determining the frequency of transactions. This would include, for example, the need to switch a *client* within or between *packaged products*.

[deleted]

Income withdrawals, short-term annuities and uncrystallised funds pension lump sum payments

9.3.3 G

When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals*, *uncrystallised funds pension lump sum* payments or purchase of *short-term annuities*, it should consider all the relevant circumstances including:

(1) the *client*'s *investment* objectives, need for tax-free cash and state of health;

(2) current and future income requirements, existing pension assets and the relative importance of the plan, given the *client's* financial circumstances;

(3) the *client's* attitude to risk, ensuring that any discrepancy is clearly explained between his or her attitude to an *income withdrawal*, *uncrystallised funds pension lump sum* payment or purchase of a *short-term annuity* and other *investments*.

9.3.3A G

(1) When a *firm* is making a *personal recommendation* to a *retail client* about the investment of funds in the client's *capped drawdown pension fund* or *flexi-access drawdown pension fund* its suitability assessment under ■ COBS 9.2.1R(1)(a) should include consideration of *pathway investments*.

(2) *Pathway investments* do not need to be considered where the *personal recommendation* is to purchase a fixed-term product that:

(a) provides a guaranteed income, a guaranteed capital return or both; and

(b) does not expose the client to investment risk, if the client remains in the product for the fixed term.

Loans and mortgages

9.3.4 G

When considering the suitability of a particular *investment* product which is linked directly or indirectly to any form of loan, mortgage or *home reversion plan*, a *firm* should take account of the suitability of the overall transaction. The *firm* should also have regard to any applicable suitability *rules* in *MCOB*.

Investments subject to restrictions on retail distribution

9.3.5 G

(1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:

(a) *non-mainstream pooled investments* are subject to a restriction on *financial promotions* (see section 238 of the Act and ■ COBS 4.12);

(b) *non-readily realisable securities* are subject to a restriction on *direct offer financial promotions* (see ■ COBS 4.7);

(c) *contingent convertible instruments* and *CoCo funds* are subject to a restriction on sales and on promotions (see ■ COBS 22.3);

(d) *mutual society shares* are subject to specific requirements in relation to *dealing* and *arranging* activities (see ■ COBS 22.3);

(e) deferred shares issued by a *credit union* are subject to specific requirements in relation to *dealing* and *arranging* activities (see ■ CREDS 3A.5);

(f) *credit union subordinated debt* is subject to a restriction on *direct offer financial promotions* (see ■ CREDS 3A.5);

(g) *speculative illiquid securities* are subject to a restriction on *financial promotions* (see ■ COBS 4.14).

(2) A *firm* should be satisfied that an exemption is available before recommending an *investment* subject to a restriction on distribution to a *retail client*, noting in particular that a *personal recommendation* to invest will generally incorporate a *financial promotion*.

(3) (a) In addition to assessing whether the promotion is permitted, a *firm* giving advice on a *designated investment* subject to a restriction on distribution should comply with their obligations in ■ COBS 9 and ensure any *personal recommendation* is suitable for its client.

(b) (i) In considering its obligations under ■ COBS 9, a *firm* purchasing a *designated investment* subject to a restriction

on distribution on behalf of a *retail client* as part of a discretionary management agreement should exercise particular care to ensure the transaction is suitable and in that *client's* best interests, having regard to the *FCA's* view that such *designated investments* pose particular risks of inappropriate distribution.

(ii) A restriction on promotion does not affect a transaction where there has been no prior communication with the *client* in connection with the investment by the *firm* or a *person* connected to the *firm*. Nonetheless, if promotion of a *designated investment* to a *retail client* would not have been permitted, then the discretionary manager's decision to purchase it on behalf of the *retail client* should be supported by detailed and robust justification of his assessment of suitability.

Pension transfers, conversions and opt-outs

9.3.6 G *Guidance* on assessing suitability when a *firm* is making a *personal recommendation* for a *retail client* who is, or is eligible to be, a member of a *pension scheme* with *safeguarded benefits* and who is considering whether to transfer, convert or opt-out is contained in ■ COBS 19.1.6G (in respect of *full pension transfer or conversion advice* or advice on a *pension opt-out*) and ■ COBS 19.1A.11G (in respect of *abridged advice*).

9

9.4 Suitability reports

Providing a suitability report

9.4.1 R A *firm* must provide a *suitability report* to a *retail client* if the *firm* makes a *personal recommendation* to the *client* and the *client*:

(1) acquires a holding in, or *sells* all or part of a holding in:

(a) a *regulated collective investment scheme*;

(b) an *investment trust* where the relevant *shares* have been or are to be acquired through an *investment trust savings scheme*;

(c) an *investment trust* where the relevant *shares* are to be held within an *ISA* which has been promoted as the means for investing in one or more specific *investment trusts*; or

(2) *buys*, *sells*, surrenders, converts or cancels rights under, or suspends contributions to, a *personal pension scheme* or a *stakeholder pension scheme*; or

(3) elects to make *income withdrawals*, an *uncrystallised funds pension lump sum* payment or purchase a *short-term annuity*; or

(4) enters into a *pension opt-out*.

9.4.2 R If a *firm* makes a *personal recommendation* in relation to a *life policy*, it must provide the *client* with a *suitability report*.

[**Note:** first and third paragraphs of article 20(1) of the *IDD*]

9.4.2A R If a *firm* makes a *personal recommendation* in relation to a *pension transfer* or *pension conversion*, it must provide:

the *client* with a *suitability report*; and

(except where the only *safeguarded benefit* involved is a *guaranteed annuity rate*) a one page summary at the front of the *suitability report*.

9.4.3 R The obligation to provide a *suitability report* does not apply:

(1) if the *firm*, acting as an *investment manager* for a *retail client*, makes a *personal recommendation* relating to a *regulated collective investment scheme*;

(2) if the *client* is habitually resident outside the *United Kingdom* and the *client* is not present in the *United Kingdom* at the time of

acknowledging consent to the proposal form to which the *personal recommendation* relates;

(3) [deleted]

(4) if the *personal recommendation* is to increase a regular *premium* to an existing contract;

(5) if the *personal recommendation* is to invest additional single *premiums* or single contributions to an existing *packaged product* to which a single *premium* or single contribution has previously been paid.

Timing

9.4.4 R A *firm* must provide the *suitability report* to the *client*:

(1) in the case of a *life policy*, before the contract is concluded;

(2) in the case of a *personal pension scheme* or *stakeholder pension scheme* that is not a *life policy*, where the *rules* on cancellation (■ COBS 15) require notification of the right to cancel, no later than the fourteenth day after the contract is concluded;

(2A) in the case of a *pension transfer* or *pension conversion*, in good time before the transaction is effected; or

(3) in any other case, when or as soon as possible after the transaction is effected or executed.

[**Note:** first and third paragraphs of article 20(1) of the *IDD*]

9.4.5 R [deleted]

9.4.6 R In the case of telephone selling of a *life policy*, when the only contact between a *firm* and its *client* before conclusion of a contract is by telephone, the *suitability report* must be given in accordance with ■ COBS 7.4.

[**Note:** article 23(7) of the *IDD*]

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9.4.7 R The *suitability report* must, at least:

(1) specify, on the basis of the information obtained from the *client*, the *client's* demands and needs;

(2) explain why the *firm* has concluded that the recommended transaction is suitable for the *client* having regard to the information provided by the *client*;

(3) explain any possible disadvantages of the transaction for the *client*; and

(4) in the case of a *life policy*, include a personalised recommendation explaining why a particular *life policy* would best meet the *client's* demands and needs.

[**Note:** first and third paragraphs of article 20(1) of the *IDD*]

9.4.8 R A *firm* must ensure the details are modulated according to the complexity of the transaction or the proposed *contract of insurance* and the type of *client*.

[**Note:** article 20(2) of the *IDD*]

9.4.8A R Where a *friendly society* has given a *personal recommendation* on a small *life policy* in ■ COBS 9.2.9R(2), the *suitability report* must include, at least, the information required by ■ COBS 9.4.7R(1) and (4).[**Note:** first and third paragraphs of article 20(1) of the *IDD*]

Means of communication (life policies)

9.4.9 R If a *firm* is providing a *suitability report* in the course of *insurance distribution activity*, the information must be in accordance with ■ COBS 7.4.

[**Note:** article 23 of the *IDD*]

Additional content for income withdrawals

9.4.10 G When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals* or purchase of *short-term annuities* or making *uncrystallised funds pension lump sum* payments, explanation of possible disadvantages in the *suitability report* should include the risk factors involved in entering into an *income withdrawal*, purchase of a *short-term annuity* or making *uncrystallised funds pension lump sum* payments. These may include:

(1) the capital value of the fund may be eroded;

(2) the *investment* returns may be less than those shown in the illustrations;

(3) annuity or *scheme pension* rates may be at a worse level in the future;

(4) the levels of income provided may not be sustainable; and

(5) there may be tax implications.

Additional content for pension transfers and conversions

9.4.11 R

(1) A *firm* must include a one page summary at the front of the *suitability report* when making a *personal recommendation* in relation to a *pension transfer* or a *pension conversion*, except where the only *safeguarded benefit* involved is a *guaranteed annuity rate*.

(2) The one page summary must include the following:

(a) a summary of the *personal recommendation*;

(b) a statement as to whether the recommendation is in relation to *abridged advice* or *full pension transfer or conversion advice*;

(c) information about the ongoing advice and/or services (if any) the *firm*, or any other *person*, proposes to provide to the *client* after the execution of the *pension transfer* or *pension conversion*;

(d) the risks associated with *pension transfers* or *pension conversions* as set out in ■ COBS 19.1.6G(4)(b), and an invitation to the *client* to consider whether they fully understand those risks and, if so, sign the one page summary to confirm that;

(e) all of the ongoing advice charges, all other ongoing charges and any additional charges expected to be incurred by the *client* if they proceed with the *pension transfer* or *pension conversion*, together with a comparison to the charges and revalued monthly income in the *ceding arrangement* and to the charges in any *default arrangement* in any available *qualifying scheme*; and

(f) information about the amounts payable (in *cash terms*) in relation to the initial advice on the *pension transfer* or *pension conversion*, and the number of months (rounded up to the nearest whole month) it would take to pay that amount out of the revalued monthly income the *client* would receive from the *ceding arrangement*.

(3) Where the *firm* only gave *abridged advice*:

(a) the information in (2)(c), (d) and (e) is not required;

(b) the information in (2)(f) must clearly state that this is only relevant if the *client* wishes to obtain *full pension transfer or conversion advice*; and

(c) the one page summary must also set out:

(i) that the *firm* has not given *full pension transfer or conversion advice*, and provide a summary of the difference between it and *abridged advice*; and

(ii) that where the *full pension transfer or conversion advice* is within the scope of the requirement in section 48 of the Pension Schemes Act 2015, no *firm* can arrange a *pension transfer* or a *pension conversion* unless the *client* receives *full pension transfer or conversion advice*.

(4) The summary in (2)(a) must:

(a) set out whether the recommendation is to effect a *pension transfer* or *pension conversion* or to remain in the *client's* current scheme or arrangement;

(b) set out where in the *suitability report* the *client* can obtain a more detailed explanation of the recommendation;

(c) invite the *client* to consider whether they accept or do not accept the recommendation and, if so, sign the one page summary to confirm that; and

(d) where the *firm* provides *full pension transfer or conversion advice* and any *advice on investments* (whether by the *firm* or any other *person*) in connection with the *pension transfer* or *pension conversion*, set out the summary of the advice given by the *firm* and/or any other *person* for both services.

(5) The information in (2)(c) must:

(a) set out that the *client* is not required to accept ongoing advice and/or services proposed (if any);

(b) explain that the *client* can opt out of receiving ongoing advice and/or services at any time;

(d) set out, in *cash terms*, the monthly and annual charges associated with receiving ongoing advice and/or services whether by the *firm* or any other *person*;

(d) where the *firm* proposes that it or another *firm* offers ongoing advice and/or services to the *client*, invite the *client* to consider

whether they wish to receive this ongoing advice and/or services proposition, and whether they agree to the associated charges, and if so, sign the one page summary to consent to receiving the ongoing advice and/or services, and agree to the associated charges; and

(e) where the *client* declines to sign the one page summary for any of the proposals in (d), set out that the *client* is not required to accept ongoing advice and/or services, and explain that additional charges and/or other amounts may be payable by the *client* if they wish to receive ongoing advice and/or services from another *person*.

(6) The summary of the anticipated charges associated with the *pension transfer* or *pension conversion* in (2)(e) must include the anticipated first-year charges after the *pension transfer* or *pension conversion* and be set out:

(a) in *cash terms*;

(b) alongside any charges associated with the *client's ceding arrangement* (and presented as nil if there are no charges); and

(c) alongside any charges associated with any *default arrangement* in any *qualifying scheme* available to the *client*, if the *client* chose to transfer to that scheme.

9

(7) The revalued monthly income in the *ceding arrangement* referred to in (2)(e) must:

(a) (where the *client* has not passed the normal retirement age) be calculated by:

(i) revaluing the *future income benefits* to the date the *client* would normally be paid in accordance with ■ COBS 19 Annex 4B 1R(1)(1); and

(ii) discounting the value of the *future income benefits* to the calculation date in accordance with the assumption in ■ COBS 19 Annex 4C 1R(4)(d);

(b) (where the *client* has passed the normal retirement age) be calculated in line with the current income in the *ceding arrangement*.

9.4.12 G

(1) If the *personal recommendation* to the *client* is to remain in the *ceding arrangement*, and the *client* declines to sign the one page summary to confirm that they intend to accept the *personal recommendation* in accordance with ■ COBS 9.4.11R(4)(c), the *firm* should follow the insistent *client* guidance in ■ COBS 9.5A (Additional guidance for firms with insistent clients).

(2) If the *client* declines to sign the one page summary of the advice to confirm their understanding of the risks in ■ COBS 9.4.11R(2)(d), the *firm* should take further steps to establish whether the *client* has fully understood the risks, and if not, consider changing its *personal recommendation*.

(3) The other ongoing charges in ■ COBS 9.4.11R(2)(e) include (but are not limited to):

(a) ongoing product charges, including those in relation to *investments* within the product;

(b) discretionary fund management charges; and/or

(c) platform charges.

(4) The additional charges in ■ COBS 9.4.11R(2)(e) include initial product charges, charges associated with accessing existing funds or moving funds to a different scheme.

9.5 Record keeping and retention periods for suitability records

9.5.1 G A *firm* to which ■ SYSC 9 applies is required to keep orderly records of its business and internal organisation (see ■ SYSC 9, General rules on record-keeping). Other *firms* are required to take reasonable care to establish and maintain such systems and controls as are appropriate to their business (see ■ SYSC 3, Systems and controls). The records may be expected to reflect the different effect of the *rules* in this chapter depending on whether the *client* is a *retail client* or a *professional client*: for example, in respect of the information about the *client* which the *firm* must obtain and whether the *firm* is required to provide a *suitability report*.

9.5.2 R A *firm* must retain its records relating to suitability for a minimum of the following periods:

(1) if relating to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely;

(2) if relating to a *life policy*, *personal pension scheme*, *stakeholder pension scheme* or benefits in a *defined contribution occupational pension scheme* (unless otherwise falling in (1) above), five years; and

(3) [deleted]

(4) in any other case, three years.

9.5.3 R A *firm* need not retain its records relating to suitability if the *client* does not proceed with the recommendation

9.5A Additional guidance for firms with insistent clients

Purpose

9.5A.1 G The *guidance* in this section is relevant where a *client* of a *firm* becomes an insistent *client*. The purpose of the *guidance* is to set out how a *firm*, when dealing with an insistent *client*, can comply with its obligations under:

(1) the *Principles* (see ■ PRIN 2);

(2) the *client's best interests rule* (see ■ COBS 2.1.1R);

(3) the *fair, clear and not misleading rule* (see ■ COBS 4.2.1R);

(4) the *rules* on suitability in this chapter (■ COBS 9 (Suitability (including basic advice)); and

(5) the *rules* on record-keeping (see ■ COBS 9.5 (Record keeping and retention periods for suitability reports) and ■ SYSC 9 (General rules on record-keeping)).

Who is an insistent client?

9.5A.2 G In this section, a *client* should be considered an insistent *client* where:

(1) the *firm* has given the *client* a *personal recommendation*;

(2) the *client* decides to enter into a transaction which is different from that recommended by the *firm* in the *personal recommendation*; and

(3) the *client* wishes the *firm* to facilitate that transaction.

Information to be communicated to an insistent client

9.5A.3 G (1) Where a *firm* proceeds to execute a transaction for an insistent *client* which is not in accordance with the *personal recommendation* given by the *firm*, the *firm* should communicate to the insistent *client*, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent *client* so that the *client* is able to understand, the information set out in (2).

(2) The information which the *firm* should communicate to the insistent *client* is:

(a) that the *firm* has not recommended the transaction and that it will not be in accordance with the *firm's personal recommendation*;

(b) the reasons why the transaction will not be in accordance with the *firm's personal recommendation*;

(c) the risks of the transaction proposed by the insistent *client*; and

(d) the reasons why the *firm* did not recommend that transaction to the *client*.

Acknowledgement from the insistent client

9.5A.4 G

(1) The *firm* should obtain from the insistent *client* an acknowledgement that:

(i) the transaction is not in accordance with the *firm's personal recommendation*; and

(ii) the transaction is being carried out at the request of the *client*.

(2) Where possible, the acknowledgment should be in the *client's* own words.

Further personal recommendations given to an insistent client

9.5A.5 G

Where a *firm* gives a further *personal recommendation* in relation to the transaction proposed by the insistent *client*, the *firm* should make clear to the *client* that this *personal recommendation* is distinct from, but does not affect the conclusions of, the initial *personal recommendation*.

Record keeping

9.5A.6 G

(1) A *firm* dealing with an insistent *client* should retain a record of:

(a) the advice and transaction process followed, including the communications with the *client*; and

(b) the acknowledgment from the *client* referred to in ■ COBS 9.5A.4G.

9.5A.7 G

A *firm* dealing with an insistent *client* should also refer to the record keeping requirements in ■ COBS 9.5 (Record keeping and retention periods for suitability records) and ■ SYSC 9.1 (General rules on record-keeping).

9.6 Special rules for giving basic advice on a stakeholder product

9.6.1 G This section applies to a *firm* giving *basic advice*, which has chosen to comply with the *rules* in this section instead of the other *rules* in this chapter (see ■ COBS 9.1.2 R).

Range

9.6.2 R A *firm* is permitted to maintain more than one *range of stakeholder products*.

9.6.3 R A *range of stakeholder products*:

(1) may include more than one *deposit-based stakeholder product*;

(2) may include the *stakeholder products* of more than one *stakeholder product* provider;

(3) must not include any more than one:

(a) *CIS stakeholder product* or *linked life stakeholder product*; or

(b) *stakeholder CTF*; or

(c) *stakeholder pension scheme*.

9.6.4 R When a *firm* provides *basic advice* it must:

(1) explain why it chose the *stakeholder products* and *stakeholder product* providers that appear in the relevant *range*; and

(2) give the *client* a list of the *stakeholder products* and *stakeholder product* providers that appear in that *range*;

if the *client* asks it do so.

Requirements on first contact

9.6.5 R When a *firm* first has contact with a retail client with a view to giving *basic advice* on a *stakeholder product*, it must give the *retail client*:

(1) the *basic advice* initial disclosure information (■ COBS 9 Annex 1), in a *durable medium*, together with an explanation of that information, unless:

(a) it has already done so and the *basic advice* initial disclosure information is likely still to be accurate and appropriate; or

(b) the contact is not face to face and is using a means of communication which makes it not practicable to provide the *basic advice* initial disclosure information in a *durable medium*; and

(2) an explanation of how the advice will be paid for and the fact that any commission will be disclosed.

9.6.6 G [deleted]

9.6.6A G A *firm* will meet the requirements in respect of its obligation to provide written disclosure in the *rules* on describing the breadth of advice (■ COBS 6.2B.33R) by providing its *basic advice* initial disclosure information (in ■ COBS 9 Annex 1 R).

9.6.7 R [deleted]

9.6.8 R If a *firm's* first contact with a *retail client* is not face to face, it must:

(1) inform the *client* at the outset:

(a) (if the communication is initiated by or on behalf of a *firm*), of the name of the *firm* and the commercial purpose of the communication;

(b) [deleted]

(c) that the *firm* will provide the *retail client* with *basic advice* without carrying out a full assessment of the *retail client's* needs and circumstances; and

(d) that such information will be confirmed in writing; and

(2) (if not provided at first contact) send the *client* the *basic advice* initial disclosure information (■ COBS 9 Annex 1) in a *durable medium* as soon as reasonably practicable following the conclusion of the first contact;

(3) (unless the relevant product is a *deposit-based stakeholder product*) if the contact is by spoken interaction, provide the *client* with the disclosure required by the *rules* on additional oral disclosure for firms providing restricted advice (■ COBS 6.2B.38R).

Sales process

9.6.9 R When a *firm* gives *basic advice*, it must do so using:

(1) a single range of *stakeholder products*; and

(2) a sales process that includes putting pre-scripted questions to the *client*.

9.6.10 R When a *firm* gives *basic advice* it must not:

(1) describe or recommend a *stakeholder product* outside the *firm's range*; or

(2) describe or recommend a *smoothed linked long term stakeholder product*; or

(3) describe fund choice, or recommend a particular fund, if a *stakeholder product* offers a choice of funds; or

(4) recommend the level of contributions required to be made to a *stakeholder pension scheme* to achieve a specific income in retirement; or

(5) recommend or agree that a *client* makes a contribution to an *ISA* which exceeds the HM Revenue & Customs *ISA* limits.

9.6.11 R

(1) If a *firm* starts the sales process for a *stakeholder product* that is not a *deposit-based stakeholder product*, it must not depart from that process unless it has advised the *retail client* that it will not provide *basic advice* on *stakeholder products* during the period of departure. A *firm* that does that must not provide *basic advice* during the departure period.

(2) Before a *firm* returns to the sales process for *stakeholder products*, it must tell the *retail client* that that process is about to recommence.

Suitability of recommendations

9.6.12 R

A *firm* must only recommend a *stakeholder product* to a *retail client* if:

(1) it has taken reasonable steps to assess the client's answers to the scripted questions and any other facts, circumstances or information disclosed by the *client* during the sales process;

(2) (unless the relevant product is a *deposit-based stakeholder product*) having done so, it has reasonable grounds for believing that the *stakeholder product* is suitable for the *client*; and

(3) the *firm* reasonably believes that the client understands the *firm's* advice and the basis on which it was provided.

9.6.13 G

COBS 9 Annex 2 gives *guidance* on the steps a *firm* could take to help it meet these suitability obligations.

9.6.14 R

If a *firm* giving *basic advice* recommends to a *retail client* to acquire a *stakeholder product*, it must ensure that, before the conclusion of the contract, its *representative*:

(1) (unless the relevant product is a *deposit-based stakeholder product*) explains to the *client*, if necessary in summary form, but always in a way that will allow the client to make an informed decision about the *firm's* recommendation:

(a) the nature of the *stakeholder product*; and

(b) the "aims", "commitment" and "risks" sections of the appropriate *key features document*;

(2) provides the *client* with a summary sheet, which is in a *durable medium* and sets out, for each product it recommends:

(a) the specific amount the *client* wishes to pay into the product; and

(b) the reasons for the recommendation, including the *client's* attitude to risk and any information provided by the *client* on which the recommendation is based; and

(3) informs the *client* that in determining any subsequent complaint, the *Ombudsman* may take into account the limited information on which the recommendation was based and the fact that it was not tailored to take account of those aspects of the *client's* financial needs and circumstances not covered by the *firm's* sales process.

9.6.15 R Notwithstanding ■ COBS 9.6.14R (2) a *firm* may provide the summary sheet (■ COBS 9.6.14R (2)) as soon as reasonably practicable after the conclusion of the contract if the *client* asks it to do so, or the contract will be concluded using a means of distance communication that does not enable the provision of the summary sheet in a *durable medium* before the conclusion of the contract, but only if the *firm*:

(1) reads the summary sheet to the *client* before it concludes the contract; and

(2) sends the summary sheet to the *client* as soon as practicable after the conclusion of the contract.

Concluding the contract

9.6.16 R If a *firm* concludes a contract for a *stakeholder product* with or for a *retail client* it must provide a copy of the completed questions and answers to the *client* in a *durable medium* as soon as reasonably practicable afterwards.

Basic advice on stakeholder products: other issues

9.6.17 R (1) [deleted]

(2) When a *firm* provides *basic advice* on a *stakeholder product*, it may use the facilities and stationery it uses for other business in respect of which it does hold itself out as acting or advising independently.

9.6.18 R A *firm* must ensure that none of its *representatives*:

(1) is likely to be influenced by the structure of his or her *remuneration* to give unsuitable *basic advice* on *stakeholder products* to a *retail client*; or

(2) refers a *retail client* to another *firm* in circumstances which would amount to the provision of any fee, commission or non-monetary benefit.

9.6.18A R (1) A *firm* providing basic advice on a *stakeholder product* that is a *life policy* must, in addition to providing the statement of demands and needs required under ■ COBS 7.3.1R, provide the *client* with a personalised explanation of why a particular *life policy* would best meet the *client's* demands and needs.

(2) The details must be modulated according to the complexity of the *life policy* proposed and the type of *client*.

(3) The information in (1) must be provided in accordance with ■ COBS 7.4.

[**Note:** third paragraph of article 20(1) and 20(2) of the *IDD*]

Records

9.6.19 R A *firm* must record that it has chosen to give *basic advice* to a *retail client* and make a record of the *range* used and the summary sheet (■ COBS 9.6.14R (2)) prepared for each *retail client*. That record must be retained for at least five years from the date of the relevant *basic advice*.

9.6.20 R (1) A *firm* must make an up-to-date record of:

(a) its *scope of basic advice*, and the *scope of basic advice* used by its *appointed representatives* (if any); and

(b) its *range* (or *ranges*) of *stakeholder products*, and the *range* (or *ranges*) used by its *appointed representatives* (if any).

(2) Those records must be retained for five years from the date on which they are replaced by a more up-to-date record.

Basic advice initial disclosure information

This Annex belongs to ■ COBS 9.6.5R (1)

Information that comprises the following:

1. the name and address (head office or principal place of business if more appropriate) of the *firm*;
2. [deleted]
3. a statement that the service being offered is *basic advice* on a limited range of *stakeholder products* by asking questions about income, savings and other circumstances but without carrying out a full assessment of the *retail client's* needs and without offering advice on whether a non-stakeholder product may be more suitable;
4. a statement, in accordance with GEN 4 that the *firm* is regulated by the *FCA* (or if an *appointed representative*, a statement of whom it is an *appointed representative* and that that *firm* is regulated by the *FCA*) to give basic advice, together with the registration number of the firm and the fact that the *firm's* status can be checked with the *FCA* on 0800 111 6768 or on the *FCA* website at http://www.fca.org.uk;
5. a statement disclosing any product provider loans (where such credit exceeds 10% of share and loan capital) and direct or indirect ownership (where that ownership exceeds 10% of share capital or voting power) either by, or of, a single *product provider* or *operator*; (See also notes 32-35 in COBS 6 Annex 1 and notes 45-50 of COBS 6 Annex 2)
6. a description of the arrangements concerning complaints and the circumstances in which the *retail client* can refer the matter to the *Financial Ombudsman Service*; (See also notes 36-37 in COBS 6 Annex 1 and notes 51-54 of COBS 6 Annex 2)
7. a description of the circumstances and the extent to which the *firm* is covered by the *compensation scheme* and the *retail client* will be entitled to compensation from the *compensation scheme*; (See also notes 38-39 of COBS 6 Annex 1 and notes 55-58 of COBS 6 Annex 2)
8. any relevant disclosure required by the *rules* on describing the breadth of advice (COBS 6.2B.33R).

[Note: in respect of 7, article 10 of the *Investors compensation directive*]

Sales processes for stakeholder products

This Annex gives *guidance* on the standards and requirements to which a *firm* may have regard in designing a sales process for *stakeholder products* and assumes that *firms* will provide *basic advice* to *retail client*s who have no practical knowledge of investing in *stakeholder products* or *investments*.

General Standards – all sales

1. A sales process for *stakeholder products* may allow the *representative* administering it to depart from scripted questions where this is desirable to enable the *retail client* to better understand the points that need to be made provided this is compatible with the *representative's* competence and the degree of support offered by the *firm's* software and other systems. A software-based system is more likely to provide an adaptable means of providing prompts and support for *representatives* which may accordingly support a more flexible sales process.

2. Questions, statements and warnings provided should be short, simple and in plain language. Questions should address one issue at a time.

3. The sales process should enable the *retail client* to exit freely and without pressure at any stage. It should also allow the *representative* to terminate the process at any stage if it appears unlikely (for affordability, mis-match, risk or other reasons) that there is a suitable product for the *retail client*.

4. Where necessary the sales process should incorporate procedures to allow uncertainties in the *retail client*'s answers to be addressed before proceeding and should generally reflect caution about proceeding if clarification or further information cannot be obtained during the process (for example if a *retail client* cannot confirm whether he or she is eligible for membership of an *occupational pension scheme*).

Preliminary - all sales

5. The *retail client* should be given the following preliminary information:

   (a) the *retail client* will only be given *basic advice* about *stakeholder products*;

   (b) *stakeholder products* are intended to provide a relatively simple and low-cost way of investing and saving;

   (c) the *range of stakeholder products* on which the *representative* will give advice to that *retail client*;

   (d) the *retail client* will be asked a series of questions about his or her needs and circumstances and, at the end of the procedure, he or she may be recom-

		mended to acquire a *stakeholder product*;
	(e)	the assessment of whether a *stakeholder product* is suitable will be made without a detailed assessment of the *retail client*'s needs but will be based only on the information disclosed during the questioning process; and
	(f)	the *retail client's* answers will be noted and, at the end of the process, if a recommendation to acquire a *stakeholder product* is made, the *retail client* will be provided with a copy of the completed questionnaire.
6.	Following 5, the *retail client* should be asked if he or she wishes to proceed and, if not, the sales process should cease.	
Affordability - all sales		
7.	If it appears that the *retail client* is unlikely to be able to afford a *stakeholder product*, the sale should be terminated and the *retail client* given an explanation together with a copy of the questions and answers completed to that point.	
Financial Priorities and Debt - all sales		
8.	A *retail client* should be assessed to ascertain other possible financial priorities -for example, does the *retail client* need (a) insurance protection; (b) access to liquid cash to meet an emergency; or (c) to reduce existing debts? If appropriate, the *retail client* should be given an unambiguous warning about the desirability of meeting those priorities before acquiring a *stakeholder product*.	
9.	A stronger warning about the desirability of addressing debt as a priority should be given if it appears that the *retail client* is significantly indebted, especially if there is a strong indication that the debt commitments may render any new commitment unaffordable in the short-term. For this purpose a *firm* should consider using a threshold or indicator to decide whether a *retail client* should be excluded on the basis of affordability. Examples may include where the *retail client* has (a) annual unsecured debt repayments in excess of 20% of gross annual income or (b) four or more active forms of unsecured debt or (c) has consistently reached his overdraft limit. A *firm* should review its chosen indicator or threshold regularly to ensure that it reflects prevailing economic conditions and takes account of industry best practice.	
10.	A *firm* should clearly explain what it needs to know about a *retail client*'s debt and consider using a range of alternative words (eg 'loans', 'student loans', 'borrowing' and 'other forms of credit') to ensure all relevant information is obtained. A *firm* may use a simple reckoner to assess *retail client* debt, but should be conscious of the nature of, and not give the impression that it is providing more than, *basic advice*.	
11.	If a *firm* gives a warning about the desirability of meeting other priorities before acquiring a *stakeholder product*, or about affordability, it should also invite the *retail client* to consider terminating the sales process.	
Saving and investment objectives - all sales (except establishing a stakeholder CTF)		

12. A *retail client's* savings and investment objectives, including the period over which the *retail client* wishes to save or invest, should be ascertained including whether the *retail client*:

(a) may need early access to some or all of the amount saved or invested; or

(b) wishes to save or invest for retirement; or

(c) wants to accumulate a specific sum by a specific date.

13. If that information indicates that the *retail client's* objective is:

(a) to accumulate a specific sum by a specific date; or

(b) to save or invest only for the short term; or

(c) early access may be required to the whole of the sum saved or invested;

the *firm* should not normally recommend a *CIS stakeholder product*, a *linked life stakeholder product*, a *stakeholder pension scheme* or topping up of a *stakeholder CTF*.

Tolerance of risk - all sales

14. If a *retail client* is not willing to accept any risk of the capital value of an investment being reduced then *CIS stakeholder products*, *linked life stakeholder products* and *stakeholder CTFs* should not usually be recommended. However, a *firm* may, if appropriate, explain the effect of inflation on long-term savings especially in relation to pensions and invite the *retail client* to consider his attitude to risk in the light of that explanation.

15. If a *retail client* is willing to accept the risk of capital reduction in some circumstances but not others then, before any recommendation to acquire a *CIS stakeholder product* or *linked life stakeholder product* is made, the *retail client* should be reminded of the other circumstances in which he or she is unwilling to accept risk to capital.

Stakeholder pensions

16. A *stakeholder pension scheme* should not be recommended, and the *retail client* should be advised to seek alternative or further advice, if it appears that the *retail client*:

(a) has or will have access to an *occupational pension scheme*; or

(b) is likely to view income in retirement from state benefits as sufficient; or

(c) already has a pension to which he or she could make further contributions; or

(d) wishes to retire within five years.

17. It may also be appropriate to advise the *retail client* that other courses of action may be more beneficial than buying a *stakeholder pension scheme* (for example joining an *occupational pension scheme*).

18.	A *firm* designing a sales process for use in the workplace may take account of the benefits offered by the employer. If a *firm* recommends a *stakeholder pension scheme* on the basis of benefits provided by an employer, then it should explain the basis of the recommendation to the *retail client* and suggest that the *retail client* seek *advice* if he or she has any concerns.
19.	A *firm* should design its processes with a view to addressing the risk that *retail client*s will fail to appreciate the significance of questions about their pension provision and should accordingly incorporate a range of questions and information designed to foster the *retail client*'s understanding of the issues and to elicit appropriate information.
20.	*Retail client* should be told that a *stakeholder pension scheme* is life-styled and what this means.
21.	A *firm* may provide a copy of the table setting out initial monthly pension amounts, found within the "Stakeholder pension decision tree" factsheet, available on https://www.moneyhelper.org.uk in accordance with COBS 13 Annex 2 1.8R, but in doing so should also provide and explain the caveats and assumptions behind the table. A *firm* should make it clear that the decision on how much to invest is the *retail client's* responsibility and that they should get further advice if they have any concerns.
ISAs	
22.	A *firm* should ascertain whether the *retail client* has already opened a mini or maxi *ISA* and, if so, whether it would be appropriate for the *retail client* to open a non-*ISA* version of the same product.

Chapter 9A

Suitability (MiFID and insurance-based investment products provisions)

9A.1 Application and purpose

Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on certain aspects of the MiFID suitability requirements, 28 May 2018/ESMA-35-43-869 (EN).

Application

9A.1.1 R This chapter applies to a *firm* which provides:

> *investment advice* or *portfolio management* in the course of *MiFID, equivalent third country or optional exemption business*; or
>
> *investment advice* in relation to an *insurance-based investment product*.

Effect of provisions marked "UK" for third country investment firms and MiFID optional exemption firms

9A.1.2 R Provisions in this chapter marked "UK" and including a Note ('**Note:**') referring to the *MiFID Org Regulation* apply in relation to *MiFID optional exemption business* as if they were *rules*.

9A.1.3 G The effect of ■ GEN 2.2.22AR is that provisions in this chapter marked "UK" also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

Effect of provisions marked "UK" for the firms distributing insurance-based investment products

9A.1.4 R Provisions in this chapter marked "UK" and including a Note ('**Note:**') referring to the *IDD Regulation* apply as if they were *rules* in relation to *insurance distribution activities* to which the *IDD Regulation* does not apply.

9A.2 Assessing suitability: the obligations

9A.2.1 R When providing *investment advice* or *portfolio management* a *firm* must:

(1) obtain the necessary information regarding the *client's*:

(a) knowledge and experience in the investment field relevant to the specific type of *financial instrument*, *insurance-based investment product* or service;

(b) financial situation including his ability to bear losses; and

(c) investment objectives including his risk tolerance,

so as to comply with (2);

(2) only recommend *investment services*, *financial instruments* and *insurance-based investment products*, as applicable, or take decisions to trade, which are suitable for the *client* and, in particular, in accordance with the *client's* risk tolerance and ability to bear losses.

[**Note:** first paragraph of article 25(2) of *MiFID*, first paragraph of article 30(1) of the *IDD*]

9A.2.2 G *Firms* should undertake a suitability assessment not only when making a *personal recommendation* to buy a *financial instrument* or an *insurance-based investment product* but for all decisions whether to trade, including making any *personal recommendations* about whether or not to buy, hold or sell an investment.

[**Note:** recital 87 to the *MiFID Org Regulation*]

9A.2.3 G Where a *firm* providing a *portfolio management* service makes a recommendation or request, or provides advice, to a *client* to the effect that the *client* should give or alter a mandate to the *firm* that defines the limits of the *firm's* discretion, that recommendation, request or advice should be considered a recommendation for the purposes of ■ COBS 9A.2.1R. A *firm* should therefore undertake a suitability assessment in relation to any such recommendation, request or advice.

[**Note:** recital 89 to the *MiFID Org Regulation*]

9A.2.3A R When proposing an *insurance-based investment product* a *firm* must ensure it is consistent with the *client's* insurance demands and needs.

[**Note:** recital 44 to, and second paragraph article 20(1) of, the *IDD*]

Assessing the extent of the information required: MiFID business

9A.2.4 UK

54(2) Investment firms shall determine the extent of the information to be collected from clients in light of all the features of the investment advice or portfolio management services to be provided to those clients. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:

(a) it meets the investment objectives of the client in question, including client's risk tolerance;

(b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;

(c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

[**Note:** article 54(2) of the *MiFID Org Regulation*]

Assessing the extent of the information required: insurance-based investment products

9A.2.4A UK

9(1)For the purposes of providing advice on an insurance-based investment product in accordance with [■ COBS 9A.2.1R and ■ COBS 9A.2.16R], insurance intermediaries or insurance undertakings shall determine the extent of the information to be collected from the customer or potential customer in light of all the features of the advice to be provided to the customer or potential customer.

9(2)Without prejudice to the fact that, in accordance with [■ COBS 9A.2.3AR, ■ COBS 9A.3.2R and ■ COBS 9A.3.2AR], any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall obtain from customers or potential customers such information as is necessary for them to understand the essential facts about the customer or potential customer and to have a reasonable basis for determining that their personal recommendation to the customer or potential customer satisfies all of the following criteria:

(a)it meets the customer's or potential customer's investment objectives, including that person's risk tolerance;

(b)it meets the customer's or potential customer's financial situation, including that person's ability to bear losses;

(c)it is such that the customer or potential customer has the necessary knowledge and experience in the investment field relevant to the specific type of product or service.

17(3)Where information required for the purposes of [■ COBS 9A.2.1R, ■ COBS 9A.2.16R, ■ COBS 10A.2.1R and ■ COBS 10A.2.2R] has already been obtained pursuant to [■ COBS 9A.2.3AR, ■ COBS 9A.3.2R and ■ COBS 9A.3.2AR], insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[**Note:** articles 9(1) and (2) and 17(3) of the *IDD Regulation*]

Professional clients: MiFID business

9A.2.5 UK

54(3) Where an investment firm provides an investment service to a professional client it shall be entitled to assume that in relation to the products, transactions and services for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of point (c) of paragraph 2.

Where that investment service consists in the provision of investment advice to a professional client covered by Part 2 of Schedule 1 to Regulation (EU) No 600/2014, the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

[**Note:** article 54(3) of the *MiFID Org Regulation*]

Obtaining information about knowledge and experience: MiFID business

9A.2.6 UK

55(1) Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

(a) the types of service, transaction and financial instrument with which the client is familiar;

(b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;

(c) the level of education, and profession or relevant former profession of the client or potential client.

[**Note:** article 55(1) of the *MiFID Org Regulation*]

Obtaining information about knowledge and experience: insurance-based investment products

9A.2.6A UK

17(1)For the purposes of [■ COBS 9A.2.1R, ■ COBS 9A.2.16R, ■ COBS 10A.2.1R and ■ COBS 10A.2.2R], the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:

(a)the types of service, transaction, insurance-based investment product or financial instrument with which the customer or potential customer is familiar;

(b)the nature, number, value and frequency of the customer's or potential customer's transactions in insurance-based investment products or financial instruments and the period over which they have been carried out;

(c)the level of education, and profession or relevant former profession of the customer or potential customer.

[**Note:** article 17(1) of the *IDD Regulation*]

Obtaining information about a client's financial situation: MiFID business

9A.2.7 UK

54(4) The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

[**Note:** article 54(4) of the *MiFID Org Regulation*]

Obtaining information about a client's financial situation: insurance-based investment products

9A.2.7A UK

9(3)The information regarding the customer's or potential customer's financial situation, including that person's ability to bear losses, shall include, where relevant, information on the source and extent of the customer's or potential customer's regular income, assets, including liquid assets, investments and real property and the regular financial commitments. The level of information gathered shall be appropriate to the specific type of product or service being considered.

[**Note:** article 9(3) of the *IDD Regulation*]

Obtaining information about a client's investment objectives: MiFID business

9A.2.8 UK

54(5) The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

[**Note:** article 54(5) of the *MiFID Org Regulation*]

Obtaining information about a client's investment objectives: insurance-based investment products

9A.2.8A UK

9(4)The information regarding the customer's or potential customer's investment objectives, including that person's risk tolerance, shall include, where relevant, information on the length of time for which the customer or potential customer wishes to hold the investment, that person's preferences regarding risk taking, the risk profile, and the purposes of the investment. The level of information gathered shall be appropriate to the specific type of product or service being considered.

[**Note:** article 9(4) of the *IDD Regulation*]

Reliability of information: MiFID business

9A.2.9 UK

54(7) Investment firms shall take reasonable steps to ensure that the information collected about their clients or potential clients is reliable. This shall include, but shall not be limited to, the following:

(a) ensuring clients are aware of the importance of providing accurate and up-to-date information;

(b) ensuring all tools, such as risk assessment profiling tools or tools to assess a client's knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their clients, with any limitations

identified and actively mitigated through the suitability assessment process;

(c) ensuring questions used in the process are likely to be understood by clients, capture an accurate reflection of the client's objectives and needs, and the information necessary to undertake the suitability assessment; and

[**Note:** article 54(7) of the *MiFID Org Regulation*]

Reliability of information: insurance-based investment products

9A.2.9A UK

10Insurance intermediaries and insurance undertakings shall take reasonable steps to ensure that the information collected about customers and potential customers for the purposes of the assessment of suitability is reliable. Such steps shall include, but shall not be limited to, the following:

(a)ensuring that customers are aware of the importance of providing accurate and up-to-date information;

(b)ensuring that all tools, such as risk assessment profiling tools or tools to assess a customer's knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their customers, with any limitations identified and actively mitigated through the suitability assessment process;

(c)ensuring that questions used in the process are likely to be understood by the customers and to capture an accurate reflection of the customer's objectives and needs and the information necessary to undertake the suitability assessment;

(d)taking steps, as appropriate, to ensure the consistency of customer information, such as considering whether there are obvious inaccuracies in the information provided by the customer.

[**Note:** article 10 of the *IDD Regulation*]

Maintaining adequate and up-to-date information: MiFID business

9A.2.10 UK

54(7) Investment firms having an on-going relationship with the client, such as by providing an on-going advice or portfolio management service, shall have, and be able to demonstrate, appropriate policies and procedures to maintain adequate and up-to-date information about clients to the extent necessary to fulfil the requirements under paragraph 2.

[**Note:** article 54(7) of the *MiFID Org Regulation*]

Discouraging the provision of information: MiFID business

9A.2.11 UK

55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of [■ COBS 9A.2.1R and ■ COBS 10A.2.1R].

[**Note:** article 55(2) of the *MiFID Org Regulation*]

Discouraging the provision of information: insurance-based investment products

9A.2.11A UK

17(2)The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of [■ COBS 9A.2.1R, ■ COBS 9A.2.16R, ■ COBS 10A.2.1R and ■ COBS 10A.2.2R].

[**Note:** article 17(2) of the *IDD Regulation*]

Reliance on information: MiFID business

9A.2.12 UK

55(3) An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[**Note:** article 55(3) of the **MiFID Org Regulation**]

Reliance on information: insurance-based investment products

9A.2.12A UK

17(4)The insurance intermediary or insurance undertaking shall be entitled to rely on the information provided by its customers or potential customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[**Note:** article 17(4) of the *IDD Regulation*]

Insufficient information: MiFID business

9A.2.13 UK

54(8) Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under [■ COBS 9A.2.1R], the firm shall not recommend investment services or financial instruments to the client or potential client.

[**Note:** article 54(8) of the *MiFID Org Regulation*]

Insufficient information: insurance-based investment products

9A.2.13A UK

9(5)Where the insurance intermediary or insurance undertaking does not obtain the information required under [■ COBS 9A.2.1R and ■ COBS 9A.2.16R], the insurance intermediary or insurance undertaking shall not provide advice on insurance-based investment products to the customer or potential customer.

[**Note:** article 9(5) of the *IDD Regulation*]

Insufficient information: MiFID business and insurance-based investment products

9A.2.14 G

Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *client's best interests rule* and any obligation it may have under the *rules* relating to appropriateness when providing the different service (see ■ COBS 10A (Appropriateness (for non-advised services in relation to MiFID and insurance-based investment products provisions))).

Identifying the subject of a suitability assessment: MiFID business

9A.2.15 UK

54(6) Where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person, the investment firm shall establish and implement policy as to who should be subject to the suitability assessment and how this assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives should be collected. The investment firm shall record this policy.

Where a natural person is represented by another natural person or where a legal person having requested treatment as professional client in accordance with Part 3 of Schedule 1 to Regulation (EU) No 600/2014 is to be considered for the suitability assessment, the financial situation and investment objectives shall be those of the legal person or, in relation to the natural person, the underlying client rather than of the representative. The knowledge and experience shall be that of the representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client.

[**Note:** article 54(8) of the *MiFID Org Regulation*]

Identifying the subject of a suitability assessment: insurance-based investment products

9A.2.15A UK

13With regard to group insurance the insurance intermediary or insurance undertaking shall establish and implement a policy as to who shall be subject to the suitability assessment in case an insurance contract is concluded on behalf of a group of members and each individual member cannot take an individual decision to join. Such a policy shall also contain rules on how that assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives shall be collected.

The insurance intermediary or insurance undertaking shall record the policy established pursuant to the first paragraph.

[**Note:** article 13 of the *IDD Regulation*]

Bundled packages: MiFID business and insurance-based investment products

9A.2.16 R

Where a *firm* provides *investment advice* recommending a package of services or products bundled pursuant to ■ COBS 6.1ZA.16R (for MiFID business) or ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16ER (for *insurance-based investment products*), the *firm* must ensure that the overall bundled package is suitable for the *client*.

[**Note:** second paragraph of article 25(2) of *MiFID* and second paragraph of article 30(1) of the *IDD*]

9A.2.17 G

When considering the suitability of a particular *financial instrument* or *insurance-based investment product* which is linked directly or indirectly to any form of loan, mortgage or *home reversion plan*, a *firm* should take account of the suitability of the overall transaction. The *firm* should have regard to any applicable suitability *rules* in *MCOB*.

Switching: MiFID business

9A.2.18 UK

54(11) When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.

The requirements laid down in the first subparagraph do not apply to services provided to professional clients.

[**Note:** article 54(11) of the *MiFID Org Regulation*]

Switching: insurance-based investment products

9A.2.18A UK

9(7)When providing advice that involves switching between underlying investment assets, insurance intermediaries and insurance undertakings shall also collect the necessary information on the customer's existing underlying investment assets and the recommended new investment assets and shall undertake an analysis of the expected costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs.

[**Note:** article 13 of the *IDD Regulation*]

Adequate policies and procedures: MiFID business

9A.2.19 UK

54(9) Investment firms shall have, and be able to demonstrate, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of investment services and financial instruments selected for their clients and that they assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile.

[**Note:** article 54(13) of the *MiFID Org Regulation*]

Unsuitability: MiFID business

9A.2.20 UK

54(10) When providing the investment service of investment advice or portfolio management, an investment firm shall not recommend or decide to trade where none of the services or instruments are suitable for the client.

[**Note:** article 54(13) of the *MiFID Org Regulation*]

Unsuitability: insurance-based investment products

9A.2.20A UK

9(6)When providing advice on an insurance-based investment product in accordance with [■ COBS 9A.2.1R and ■ COBS 9A.2.16R], an insurance intermediary or insurance undertaking shall not make a recommendation where none of the products are suitable for the customer or potential customer.

[**Note:** article 13 of the *IDD Regulation*]

Guidance on assessing suitability: MiFID business and insurance-based investment products

9A.2.21 G

(1) A transaction may be unsuitable for a *client* due to the risks of the associated *financial instruments*, the type of transaction, the characteristics of the order or the frequency of the trading.

(1A) An *insurance-based investment product* may be unsuitable for a *client* due to the risks of the underlying investment assets, the type or characteristics of the product or the frequency of switching of underlying investment assets.

(2) A series of transactions, each of which are suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.

(3) In the case of *portfolio management*, a transaction might be unsuitable if it would result in an unsuitable portfolio.

[**Note:** recital 88 to the *MiFID Org Regulation*, recital 9 to the *IDD Regulation*]

Investments subject to restrictions on retail distribution: MiFID business and insurance-based investment products

9A.2.22 G

(1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:

(a) *non-mainstream pooled investments* are subject to a restriction on *financial promotions* (see section 238 of the *Act* and ■ COBS 4.12);

(b) *non-readily realisable securities* are subject to a restriction on *direct offer financial promotions* (see ■ COBS 4.7);

(c) *mutual society shares* are subject to specific requirements in relation to *dealing* and *arranging activities* (see ■ COBS 22.2);

(d) *contingent convertible instruments* and *CoCo funds* are subject to a restriction on sales and on promotions (see ■ COBS 22.3);

(e) *speculative illiquid securities* are subject to a restriction on *financial promotions* (see ■ COBS 4.14).

(2) A *firm* should be satisfied that an exemption is available before recommending an *investment* subject to a restriction on distribution to a *retail client*, noting in particular that a *personal recommendation* to invest will generally incorporate a *financial promotion*.

(3) In addition to assessing whether the promotion is permitted, a *firm* giving advice on an *investment* subject to a restriction on distribution should comply with their obligations in ■ COBS 9A and ensure any *personal recommendation* is suitable for its *client*.

(4) In considering its obligations under ■ COBS 9A, a *firm* purchasing an *investment* subject to a restriction on distribution on behalf of a *retail client* as part of a discretionary management agreement should exercise particular care to ensure the transaction is suitable and in the client's best interests, having regard to the *FCA's* view that such *investments* pose particular risks of inappropriate distribution.

(5) A restriction on promotion does not affect a transaction where there has been no prior communication with the *client* in connection with the investment by the *firm* or a person connected to the *firm*. Nonetheless, if promotion of an *investment* to a *retail client* would not have been permitted, then the discretionary manager's decision to purchase it on behalf of the *retail client* should be supported by detailed and robust justification of his assessment of suitability.

Automated or semi-automated systems: MiFID business

9A.2.23 UK

54(1) Where investment advice or portfolio management services are provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the investment firm providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation or decision to trade.

[**Note:** article 54(13) of the *MiFID Org Regulation*]

Automated or semi-automated systems: insurance-based investment products

9A.2.24 UK

12The insurance intermediary's or insurance undertaking's responsibility to perform the suitability assessment in accordance with [■ COBS 9A.2.1R and ■ COBS 9A.2.16R] shall not be reduced due to the fact that advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system.

[**Note:** article 13 of the *IDD Regulation*]

9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability: MiFID business

9A.3.1 UK

54(1) Investment firms shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability of investment services or financial instruments in accordance with [■ COBS 9A.2.1R]. When undertaking the suitability assessment, the firm shall inform clients or potential clients, clearly and simply, that the reason for assessing suitability is to enable the firm to act in the client's best interest.

[**Note:** article 54(13) of the *MiFID Org Regulation*]

9A.3.1A UK

11Insurance intermediaries and insurance undertakings shall not create any ambiguity or confusion about their responsibilities in the process of assessing the suitability of insurance-based investment products in accordance with [■ COBS 9A.2.1R and ■ COBS 9A.2.16R]. Insurance intermediaries and insurance undertakings shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.

[**Note:** article 13 of the *IDD Regulation*]

Suitability reports: MiFID business and insurance-based investment products

9A.3.2 R

(1) [deleted]

(2) When providing *investment advice* to a *retail client*, a *firm* must, before the transaction is concluded, provide the *client* with a *suitability report* in a *durable medium*:

(a) specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the *client*;

(b) (for an *insurance-based investment product*):

(i) specifying, on the basis of the information obtained from the *client*, the *client's* demands and needs; and

(ii) including a personalised recommendation explaining why a particular *insurance-based investment product* would best meet the *client's* demands and needs.

The details in (i) and (ii) must be modulated according to the complexity of the *contract of insurance* proposed and the type of *client*.

(3) Where the transaction is concluded using a means of distance communication which prevents the prior delivery of the *suitability*

report, the *firm* may provide the *suitability report* in a *durable medium* immediately after the *client* is bound by the transaction , provided both the following conditions are met:

(a) the *client* has consented to receiving the *suitability report* without undue delay after the conclusion of the transaction; and

(b) the *firm* has given the *client* the option of delaying the transaction in order to receive the *suitability report* in advance.

(4) Where a *firm* provides a *portfolio management* service or has informed the *client* that it will carry out periodic assessment of suitability, the periodic report, provided under ■ COBS 16A.2.1R, must contain an updated statement of how the *client's* investments meet the preferences, objectives and other characteristics of the *client*.

[**Note:** second, third and fourth paragraphs of article 25(6) of, and recital 82 to, *MiFID*; article 20(1), article 20(2), second paragraph of article 22(1) and second, third and fourth paragraphs of article 30(5) of the *IDD*]

9A.3.2A R Where a *firm* makes a *personal recommendation* to a *professional client* on an *insurance-based investment product* it must, prior to the conclusion of the contract, provide to the client the information in ■ COBS 9A.3.2R(2)(b) in accordance with ■ COBS 7.4.

[**Note:** article 20(1) and 20(2) of the *IDD*]

9A

Providing a suitability report: MiFID business

9A.3.3 UK 54(12) When providing investment advice, investment firms shall provide a report to the retail client that includes an outline of the advice given and how the recommendation provided is suitable for the retail client, including how it meets the client's objectives and personal circumstances with reference to the investment term required, client's knowledge and experience and client's attitude to risk and capacity for loss.

Investment firms shall draw clients' attention to and shall include in the suitability report information on whether the recommended services or instruments are likely to require the retail client to seek a periodic review of their arrangements.

Where an investment firm provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established may only cover changes in the services or instruments involved and/or the circumstances of the client and may not need to repeat all the details of the first report.

[**Note:** article 54(13) of the *MiFID Org Regulation*]

Providing a suitability report: insurance-based investment products

9A.3.3A UK 14(1)When providing advice on the suitability of an insurance-based investment product in accordance with [■ COBS 9A.2.1R and ■ COBS 9A.2.16R], insurance intermediaries and insurance undertakings shall provide a statement to the customer (suitability statement) that includes the following:

(a)an outline of the advice given;

(b)information on how the recommendation provided is suitable for the customer, in particular how it meets:

(i)the customer's investment objectives, including that person's risk tolerance;

(ii)the customer's financial situation, including that person's ability to bear losses;

(iii)the customer's knowledge and experience.

14(2)Insurance intermediaries and insurance undertakings shall draw customers' attention to, and shall include in the suitability statement, information on whether the recommended insurance-based investment products are likely to require the customer to seek a periodic review of their arrangements.14(3)Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the subsequent statements after the initial service is established may be limited to changes in the services or underlying investment assets, and/or the circumstances of the customer without repeating all the details contained in the first statement.

[**Note:** article 13 of the *IDD Regulation*]

9A.3.4 G When providing a *suitability report*, a *firm* should consider the requirements in ■ COBS 4.2.1R to ensure that the contents of the suitability report are fair, clear and not misleading.

9A.3.5 G Situations that are likely to require a *retail client* to seek a periodic review of their arrangements include where a *client* is likely to need to seek advice to bring a portfolio of investments back in line with the original recommended allocation where there is a probability that the portfolio could deviate from the target asset allocation.

[**Note:** recital 85 to the *MiFID Org Regulation*]

Periodic assessments: MiFID business and insurance-based investment products

9A.3.6 R A *firm* must:

(1) in relation to an *insurance-based investment product*, at least in good time prior to the conclusion of the contract;

(2) otherwise, in good time before it provides its *investment advice*;

inform the *client* whether it will provide the *client* with a periodic assessment of the suitability of the financial instruments or the *insurance-based investment products* recommended to the *client*.

[**Note:** article 24(4)(a)(iii) of *MiFID*, article 29(1)(a) of the *IDD*]

9A.3.7 G ■ COBS 9A.3.6R supplements ■ COBS 2.2A.2R (information disclosure before providing services (MiFID provisions and insurance distribution)).

Periodic assessments: MiFID business

9A.3.8 UK 52(5) Investments firms providing a periodic assessment of the suitability of the recommendations provided pursuant to Article 54(12) shall disclose all of the following:

(a) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;

(b) the extent to which the information previously collected will be subject to reassessment; and

(c) the way in which an updated recommendation will be communicated to the client.

[**Note:** article 54(13) of the *MiFID Org Regulation*]

9A.3.9 UK 54(13) Investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended.

[**Note:** article 54(13) of the *MiFID Org Regulation*]

Periodic assessments: insurance-based investment products

9A.3.10 UK 14(4)Insurance intermediaries and insurance undertakings providing a periodic assessment of suitability shall review, in accordance with the best interests of their customers, the suitability of the recommended insurance-based investment products at least annually. The frequency of this assessment shall be increased depending on the characteristics of the customer, such as the risk tolerance, and the nature of the recommended insurance-based investment product.

[**Note:** article 13 of the *IDD Regulation*]

9A.4 Record keeping and retention periods for suitability records

Record keeping: MiFID business and insurance-based investment products

9A.4.1 G A *firm* to which ■ SYSC 9 applies is required to keep orderly records of its business and internal organisation (see ■ SYSC 9 (General rules on record-keeping)). The records may be expected to reflect the different effect of the requirements in this chapter depending on whether the *client* is a *retail client* or a *professional client*; for example, in respect of information about the *client* which the *firm* must obtain and whether the *firm* is required to provide a *suitability report*.

9A.4.2 G A *firm* should refer to ■ SYSC 3.2 and ■ SYSC 3.3 (for insurers and managing agents) and ■ SYSC 9 (for other *firms*) for its obligations in relation to record keeping.

[**Note:** article 16(7) of *MiFID*]

Retention of records: insurance-based investment products

9A.4.3 UK 19(1)Without prejudice to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with [■ COBS 9A.2.1R, ■ COBS 9A.2.16R, ■ COBS 10A.2.1R and ■ COBS 10A.2.2R]. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.

[**Note:** article 13 of the *IDD Regulation*]

Record-keeping obligations for the assessment of suitability: insurance-based investment products

9A.4.4 UK 19(2)In the case of an assessment of suitability undertaken in accordance with [■ COBS 9A.2.1R and ■ COBS 9A.2.16R], the record shall further include the following:

(a)the result of the suitability assessment;

(b)the recommendation made to the customer and the statement provided in accordance with Article 14(1) of this Regulation;

(c)any changes made by the insurance intermediary or insurance undertaking with regard to the suitability assessment, in particular any change to the customer's risk tolerance;

(d)any changes to the underlying investment assets.

[**Note:** article 19(2) of the *IDD Regulation*]

9A.4.4 EU 19(2)In the case of an assessment of suitability undertaken in accordance with Article 30(1) of Directive (EU) 2016/97, the record shall further include the following:

(a)the result of the suitability assessment;

(b)the recommendation made to the customer and the statement provided in accordance with Article 14(1) of this Regulation;

(c)any changes made by the insurance intermediary or insurance undertaking with regard to the suitability assessment, in particular any change to the customer's risk tolerance;

(d)any changes to the underlying investment assets.

[**Note:** article 19(2) of the *IDD Regulation*]

Chapter 10

Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)

10.1 Application

10.1.1 R [deleted]

10.1.2 R

(1) This chapter applies to a *firm* which *arranges* or *deals* in relation to a *non-readily realisable security*, *speculative illiquid security*, *derivative* or *warrant* with or for a *retail client*, other than in the course of *MiFID* or *equivalent third country business*, or facilitates a *retail client* becoming a lender under a *P2P agreement* and the *firm* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*.

(2) Where a *rule* in this chapter applies to a *firm* which *arranges* or *deals* in relation to a *speculative illiquid security*, the *rule* also applies to:

a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of ■ GEN 2.2.26R); and

a Gibraltar-based firm (having the same meaning as in the *Gibraltar Order*) to the extent that the *rule* does not already apply to such a Gibraltar-based firm as a result of ■ GEN 2.3.1R).

10.1.3 R [deleted]

Related rules

10.1.4 G A *firm* that is carrying on a *regulated activity* on a non-advised basis, whether or not the *rules* in this chapter apply to its activities, should also consider whether other *rules* in *COBS* apply.

10.2 Assessing appropriateness: the obligations

10.2.1 R

(1) When providing a service to which this chapter applies, a *firm* must ask the *client* to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the *firm* to assess whether the service or product envisaged is appropriate for the *client*.

(2) When assessing appropriateness, a *firm* must determine whether the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded.

10.2.2 R

The information regarding a *client's* knowledge and experience in the investment field includes, to the extent appropriate to the nature of the *client*, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

(1) the types of service, transaction and *designated investment* with which the *client* is familiar;

(2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the *client*.

10.2.3 R

A *firm* must not encourage a *client* not to provide information required for the purposes of its assessment of appropriateness.

Reliance on information

10.2.4 R

A *firm* is entitled to rely on the information provided by a *client* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

Use of existing information

10.2.5 G

When assessing appropriateness, a *firm* may use information it already has in its possession.

Knowledge and experience

10.2.6 G Depending on the circumstances, a *firm* may be satisfied that the *client's* knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a *firm* may infer knowledge from experience.

Increasing the client's understanding

10.2.7 G If, before assessing appropriateness, a *firm* seeks to increase the *client's* level of understanding of a service or product by providing information to him, relevant considerations are likely to include the nature and complexity of the information and the *client's* existing level of understanding.

No duty to communicate firm's assessment of knowledge and experience

10.2.8 G If a *firm* is satisfied that the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in ■ COBS 9 (Suitability (including basic advice) (non-MiFID provisions)).

P2P agreements

10.2.9 G

(1) When determining whether a *client* has the necessary knowledge to understand the risks involved in relation to a *P2P agreement* or a *P2P portfolio*, a *firm* should consider asking the *client* multiple-choice questions that avoid binary (yes/no) answers and cover, at least, the following matters:

(a) the nature of the *client's* contractual relationships with the borrower and the *firm*;

(b) the *client's* exposure to the credit risk of the borrower;

(c) that all capital invested in a *P2P agreement* or *P2P portfolio* is at risk;

(d) that *P2P agreements* or *P2P portfolios* are not covered by *FSCS*;

(e) that returns may vary over time;

(f) that entering into a *P2P agreement* or investing in a *P2P portfolio* is not comparable to depositing money in a savings account;

(g) the characteristics of any:

(i) security interest, insurance or guarantee taken in relation to the *P2P agreements* or *P2P portfolio*; or

(ii) risk diversification facilitated by the *firm*; or

(iii) *contingency fund* offered by the *firm*, or

(iv) any other risk mitigation measure adopted by the *firm*;

(h) that any of the measures in (g) adopted by the *firm* cannot guarantee that the *client* will not suffer a loss in relation to the capital invested;

(i) that where a *firm* has not adopted any risk mitigation measures (such as those in (g)), the extent of any capital losses is likely to

be greater than if risk mitigation measures were adopted by the *firm*;

(j) illiquidity in the context of a *P2P agreement* or *P2P portfolio*, including the risk that the lender may be unable to exit a *P2P agreement* before maturity even where the *firm* operates a secondary market;

(k) the role of the *firm* and the scope of its services, including what the *firm* does and does not do on behalf of lenders; and

(l) the risks to the management and administration of a *P2P agreement* or *P2P portfolio* in the event of the *firm's* becoming insolvent or otherwise failing.

10.3 Warning the client

10.3.1 R

(1) If a *firm* considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the *client*, the *firm* must warn the *client*.

(2) This warning may be provided in a standardised format.

10.3.2 R

(1) If the *client* elects not to provide the information to enable the *firm* to assess appropriateness, or if he provides insufficient information regarding his knowledge and experience, the *firm* must warn the *client* that such a decision will not allow the *firm* to determine whether the service or product envisaged is appropriate for him.

(2) This warning may be provided in a standardised format.

10.3.3 G

If a *client* asks a *firm* to go ahead with a transaction, despite being given a warning by the *firm*, it is for the *firm* to consider whether to do so having regard to the circumstances.

10.4 Assessing appropriateness: when it need not be done

10.4.1 R

(1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if:

(a) the service only consists of execution and/or the reception and transmission of *client* orders, with or without *ancillary services*, it relates to particular *financial instruments* and is provided at the initiative of the *client*;

(b) the *client* has been clearly informed (whether the warning is given in a standardised format or not) that in the provision of this service the *firm* is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the protection of the *rules* on assessing suitability; and

(c) the *firm* complies with its obligations in relation to conflicts of interest.

(2) The *financial instruments* referred to in (1)(a) are:

(a) [deleted]

(b) money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a *derivative*); or

(c) [deleted]

(d) other non-complex *financial instruments*.

(3) A *financial instrument* is non-complex if it satisfies the following criteria:

(a) it is not a *derivative* or other security giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

(b) there are frequent opportunities to dispose of, redeem, or otherwise realise the instrument at prices that are publicly available to the market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument; and

(d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average *retail client* to make an informed judgment as to whether to enter into a transaction in that instrument.

10.4.2 R If a *client* engages in a course of dealings involving a specific type of product or service through the services of a *firm*, the *firm* is not required to make a new assessment on the occasion of each separate transaction. A *firm* complies with the *rules* in this chapter provided that it makes the necessary appropriateness assessment before beginning that service.

10.4.3 R [deleted]

10.5 Assessing appropriateness: guidance

The initiative of the client

10.5.1 G A service should be considered to be provided at the initiative of a *client* (see ■ COBS 10.4.1 R (1)(a)) unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that particular *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument* or specific transaction.

10.5.2 G A service can be considered to be provided at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion or offer of *investments* made by any means that by its very nature is general and addressed to the public or a larger group or category of *clients*.

Personalised communications

10.5.3 G

(1) Communications to the world at large, such as those in newspapers or on billboards, are likely to be by their very nature general and therefore not personalised communications.

(2) Communications addressed to a *client* (such as, for example, an email, telephone call or letter), may or may not be personalised depending on the content.

(3) A communication is not personalised solely because it contains the name and address of the *client* or because a mailing list has been filtered.

(4) If a *firm* is satisfied that a communication does not contain any personalised content, it may wish to make clear that it does not intend the communication to be personalised and that the personal circumstances of the recipient have not been taken into account.

10.5.4 G [deleted]

Independent valuation systems

10.5.5 G The circumstances in which valuation systems will be independent of the issuer (see ■ COBS 10.4.1 R (3)(b)) include where they are overseen by a depositary that is regulated as a provider of depositary services in a the *United Kingdom*.

10.6 When a firm need not assess appropriateness

10.6.1 G A *firm* need not assess appropriateness if it is receiving or transmitting an order in relation to which it has assessed suitability under ■ COBS 9 (Suitability (including basic advice)).

10.6.2 G [deleted]

10.7 Record keeping and retention periods for appropriateness records

10.7.1 G A *firm* is required to keep orderly records of its business and internal organisation, including all services and transactions undertaken by it. The records may be expected to include the *client* information a *firm* obtains to assess appropriateness and should be adequate to indicate what the assessment was.

10.7.2 R The *firm* must retain its records relating to appropriateness for a minimum of five years.

Chapter 10A

Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)

10A.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on complex debt instruments and structured deposits, 4 February 2016/ESMA/2015/1787 (EN).

Application

10A.1.1 R This chapter applies to a *firm* which:

(1) provides *investment services* in the course of *MiFID or equivalent third country business*; or

(2) carries on *insurance distribution* in relation to *insurance-based investment product*,

other than when the *firm* makes a *personal recommendation* or carries out *portfolio management*.

10A

10A.1.2 R This chapter applies to a *firm* which assesses appropriateness on behalf of a *MiFID investment firm* so that the other *firm* may rely on the assessment under ■ COBS 2.4.4R (Reliance on other investment firms: *MiFID* and equivalent business).

Effect of provisions marked EU

10A.1.3 R The effect of ■ GEN 2.2.22AR is that provisions in this chapter marked "UK" and including a Note ('**Note:**') referring to the *MiFID Org Regulation* also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

10A.1.4 R Provisions in this chapter marked "UK" and including a Note ('**Note:**') referring to the *IDD Regulation* apply as if they were *rules* to *firms*, to whom the *IDD Regulation* does not apply, when doing *insurance distribution*.

10A.2 Assessing appropriateness: the obligations

10A.2.1 R A *firm* must ask the *client* to provide information regarding that *client's* knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the *firm* to assess whether the service or product envisaged is appropriate for the *client*.

[**Note:** article 25(3) of *MIFID*, first paragraph of article 30(2) of the *IDD*]

10A.2.1A G A *firm* carrying on *insurance distribution* is also required to comply with the requirements in ■ COBS 7.3 (additional insurance distribution obligations: demands and needs).

[**Note:** first paragraph of article 30(2) of the *IDD*]

Bundled packages: MiFID business and insurance-based investment products

10A.2.2 R Where a bundle of services or products is envisaged pursuant to ■ COBS 6.1ZA.16R (for MiFID business) or ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16E (for *insurance-based investment products*), the assessment made pursuant to ■ COBS 10A.2.1R must consider whether the overall bundled package is appropriate.

[**Note:** article 25(3) of *MiFID*, first paragraph of article 30(2) of the *IDD*]

Assessing a client's knowledge and experience: MiFID business

10A.2.3 UK 56(1) Investment firms, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in [■ COBS 10A.1.1R] is appropriate for a client.

An investment firm shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

[**Note:** article 56(1) of the *MiFID Org Regulation*]

Assessing a client's knowledge and experience: insurance-based investment product

10A.2.3A UK Without prejudice to the fact that, in accordance with [■ COBS 9A.2.3AR, ■ COBS 9A.3.2R and ■ COBS 9A.3.2AR], any contract proposed shall be consistent

with the customer's demands and needs, insurance intermediaries or insurance undertakings shall determine whether the customer has the necessary knowledge and experience in order to understand the risks involved in relation to the service or product proposed or demanded when assessing whether an insurance service or product distributed in accordance with [■ COBS 10A.2.1R and ■ COBS 10A.2.2R] is appropriate for the customer.

[**Note**: article 15 of the *IDD Regulation*]

Information regarding a client's knowledge and experience: MiFID business

10A.2.4 UK

55(1) Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

(a) the types of service, transaction and financial instrument with which the client is familiar;

(b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;

(c) the level of education, and profession or relevant former profession of the client or potential client.

[**Note:** article 55(1) of the *MiFID Org Regulation*]

10A

Information regarding a client's knowledge and experience: insurance-based investment products

10A.2.4A UK

17(1)For the purposes of [■ COBS 9A.2.1R, ■ COBS 9A.2.16R, ■ COBS 10A.2.1R and ■ COBS 10A.2.2R], the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:

(a)the types of service, transaction, insurance-based investment product or financial instrument with which the customer or potential customer is familiar;

(b)the nature, number, value and frequency of the customer's or potential customer's transactions in insurance-based investment products or financial instruments and the period over which they have been carried out;

(c)the level of education, and profession or relevant former profession of the customer or potential customer.

17(3)Where information required for the purposes of [■ COBS 9A.2.1R, ■ COBS 9A.2.16R, ■ COBS 10A.2.1R and ■ COBS 10A.2.2R] has already been obtained pursuant to [■ COBS 9A.2.3AR, ■ COBS 9A.3.2R and ■ COBS 9A.3.2AR], insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[**Note**: article 17(1) and (3) of the *IDD Regulation*]

Discouraging the provision of information: MiFID business

10A.2.5 UK

55(2)An investment firm shall not discourage a client or potential client from providing information required for the purposes of [■ COBS 9A.2.1R and ■ COBS 10A.2.1R].

[**Note:** article 55(2) of the *MiFID Org Regulation*]

Discouraging the provision of information: insurance-based investment products

10A.2.5A UK

17(2)The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of [■ COBS 9A.2.1R, ■ COBS 9A.2.16R, ■ COBS 10A.2.1R and ■ COBS 10A.2.2R].

[**Note:** article 17(2) of the *IDD Regulation*]

Reliance on information: MiFID business

10A.2.6 UK

55(3) An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[**Note:** article 55(3) of the *MiFID Org Regulation*]

Reliance on information: insurance-based investment products

10A.2.6A UK

17(4)The insurance intermediary or insurance undertaking shall be entitled to rely on the information provided by its customers or potential customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[**Note:** article 17(4) of the *IDD Regulation*]

Use of existing information: MiFID business and insurance-based investment products

10A.2.7 G

When assessing appropriateness, a *firm* may use information it already has in its possession.

Knowledge and experience: MiFID business and insurance-based investment products

10A.2.8 G

Depending on the circumstances, a *firm* may be satisfied that the *client's* knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a *firm* may infer knowledge from experience.

Increasing the client's understanding: MiFID business and insurance-based investment products

10A.2.9 G

If, before assessing appropriateness, a *firm* seeks to increase the *client's* level of understanding of a service or product by providing information to him, relevant considerations are likely to include the nature and complexity of the information and the *client's* existing level of understanding.

No duty to communicate firm's assessment of knowledge and experience: MiFID business and insurance-based investment products

10A.2.10 G If a *firm* is satisfied that the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in ■ COBS 9A (MiFID and insurance-based investment products provisions).

10A.3 Warning the client

10A.3.1 R

(1) If a *firm* considers, on the basis of information received to enable it to assess appropriateness, that the product or service is not appropriate for the *client*, the *firm* must warn the *client*.

(2) This warning may be provided in a standardised format.

[**Note:** article 25(3) of *MiFID*, second paragraph of article 30(2) of the *IDD*]

10A.3.2 R

(1) If the *client* does not provide the information to enable the *firm* to assess appropriateness, or if the *client* provides insufficient information regarding their knowledge and experience, the *firm* must warn the *client* that the *firm* is not in a position to determine whether the service or product envisaged is appropriate for the *client*.

(2) This warning may be provided in a standardised format.

[**Note:** article 25(3) of *MiFID*, third paragraph of article 30(2) of the *IDD*]

10A.3.3 G

If a *client* asks a *firm* to go ahead with a transaction, despite being given a warning by the *firm*, it is for the *firm* to consider whether to do so having regard to the circumstances.

10A.4 Assessing appropriateness: when it need not be done due to type of investment

10A.4.1 R

(1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if either (a) or (aa), and both (b) and (c), are met:

(a) the service:

(i) only consists of execution or reception and transmission of *client* orders, with or without *ancillary services*, excluding *ancillary service* (2) in section B of Annex I to *MiFID* (granting of credits or loans), where the relevant credits or loans do not comprise existing credit limits of loans, current accounts and overdraft facilities of *clients*;

(ii) relates to particular *financial instruments* (see paragraph (2)); and

(iii) is provided at the initiative of the *client*; or

(aa) the *insurance distribution* activity:

(i) relates to particular types of *insurance-based investment products* (see (2A)); and

(ii) is carried out at the initiative of the *client*; and

(b) the *client* has been clearly informed (whether in a standardised format or not) that, in the provision of the service or *insurance distribution* activity, the *firm* is not required to assess the appropriateness of the *financial instrument* or service or *insurance-based investment product* provided or offered and that therefore the *client* does not benefit from the protection of the *rules* on assessing appropriateness; and

(c) the *firm* complies with its obligations in relation to conflicts of interest.

(2) The *financial instruments* referred to in (1)(a)(ii) are any of the following:

(a) shares in companies admitted to trading on:

(i) a *regulated market* or an *EU regulated market*; or

(ii) an equivalent third country market; or

(iii) an *MTF*,

except shares that embed a derivative and *units* in a collective investment undertaking that is not a *UCITS*; or

(b) bonds or other forms of securitised debt admitted to trading on:

(i) a *regulated market* or an *EU regulated market*; or

(ii) an equivalent third country market; or

(iii) an *MTF*,

except those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or

(c) *money-market instruments*, excluding those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or

(d) shares or *units* in a *UCITS*, excluding structured *UCITS* as referred to in the second subparagraph of article 36(1) of the *KII Regulation*; or

(e) *structured deposits*, excluding those that incorporate a structure which makes it difficult for the *client* to understand the risk of return or the cost of exiting the product before term; or

(f) other non-complex *financial instruments*.

(2A) The *insurance-based investment products* referred to in (1)(aa) are:

(a) *insurance-based investment products* which only provide investment exposure to *financial instruments* referred to in (2) and do not incorporate a structure which makes it difficult for the *client* to understand the risks involved; or

(b) other non-complex *insurance-based investment products*.

(3) For the purposes of this *rule*, a third country market is considered to be equivalent to a *regulated market* if it is a market in relation to which the Treasury has adopted an affirmative equivalence decision in accordance with the requirements and procedure in paragraph 8 of Part 1 of Schedule 3 to *MiFIR*..

[**Note:** article 25(4) of *MIFID*, article 30(3) of the *IDD*]

[**Note:** *ESMA* has published guidelines which specify criteria for the assessment of (i) debt instruments incorporating a structure which makes it difficult for the client to understand the risk involved, and (ii) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term (see ESMA/2015/1787 (EN), 4 February 2016).]

[**Note:** *EIOPA* has published guidelines under the *IDD* which specify criteria for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved (see EIOPA-17/651, 4 October 2017).]

Other non-complex financial instruments

10A.4.2 UK

57 A financial instrument which is not explicitly specified in [■ COBS 10A.4.1R(2)] shall be considered as non-complex for the purposes of paragraph (2)(f) of that rule if it satisfies the following criteria:

(a) it does not fall within Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order;

(b) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available

to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

(d) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment;

(e) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

(f) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

[**Note:** article 57 of the *MiFID Org Regulation*]

Other non-complex insurance-based investment products

10A.4.3 UK An insurance-based investment product shall be considered as non-complex for the purposes of [■ COBS 10A.4.1R] where it satisfies all of the following criteria:

(a)it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the customer after deduction of legitimate costs;

(b)it does not incorporate a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk, or pay-out profile of the insurance-based investment product;

(c)it provides options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;

(d)it does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender or otherwise realise the insurance-based investment product, doing so may cause unreasonable detriment to the customer because the charges are disproportionate to the cost to the insurance undertaking;

(e)it does not in any other way incorporate a structure which makes it difficult for the customer to understand the risks involved.

[**Note:** article 16 of the *IDD Regulation*]

10A.5 Assessing appropriateness: guidance

The initiative of the client: MiFID business and insurance-based investment products

10A.5.1 G A service should be considered to be provided, or carried out, at the initiative of a *client* (see ■ COBS 10A.4.1R(1)(a)(iii) and (aa)(ii)), unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument financial instrument*, *insurance-based investment product* or specific transaction.

[**Note:** recital 85 to *MIFID*]

10A.5.2 G A service can be considered to be provided, or carried out, at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion for, or offer of, *financial instruments* or *insurance-based investment products* made by any means and that by its very nature is general and addressed to the public or a larger group or category of *clients*.

[**Note:** recital 85 to *MIFID*]

Personalised communications: MiFID business and insurance-based investment products

10A.5.3 G

(1) Communications to the world at large, such as those in newspapers or in billboards, are likely to be by their very nature general and therefore not personalised communications.

(2) Communications addressed to a *client* (such as, for example, an email, telephone call or letter), may or may not be personalised depending on the content.

(3) A communication is not personalised solely because it contains the name and address of the *client* or because a mailing list has been filtered.

(4) If a *firm* is satisfied that a communication does not contain any personalised content, it may wish to make clear that it does not intend the communication to be personalised and that the personal circumstances of the recipient have not been taken into account.

10A.6 Assessing appropriateness: when a firm need not assess appropriateness due to suitability assessment

10A.6.1 G A *firm* need not assess appropriateness if it is receiving or transmitting an order or carrying on *insurance distribution* in relation to an *insurance-based investment product*, for which it has assessed suitability under ■ COBS 9A (Suitability (MiFID and insurance-based investment products provisions)).

10A.6.2 G A *firm* may not need to assess appropriateness if it is able to rely on a recommendation made by an *investment firm* (see ■ COBS 2.4.5G (Reliance on other investment firms: MiFID and equivalent business)) or, in relation to an *insurance-based investment product*, made by an *insurance distributor* (see ■ COBS 2.4.5AR (Reliance on other insurance distributors)).

10A.7 Record keeping and retention periods for appropriateness records

10A.7.1 G A *firm* is required to keep orderly records of its business and internal organisation, including all services and transactions undertaken by it. The records may be expected to include the *client* information a *firm* obtains to assess appropriateness and should be adequate to indicate what the assessment was.

Record keeping: MiFID business

10A.7.2 UK 56(2) Investment firms shall maintain records of the appropriateness assessments undertaken which shall include the following:

(a) the result of the appropriateness assessment;

(b) any warning given to the client where the investment service or product purchase was assessed as potentially inappropriate for the client, whether the client asked to proceed with the transaction despite the warning and, where applicable, whether the firm accepted the client's request to proceed with the transaction;

(c) any warning given to the client where the client did not provide sufficient information to enable the firm to undertake an appropriateness assessment, whether the client asked to proceed with the transaction despite this warning and, where applicable, whether the firm accepted the client's request to proceed with the transaction.

[**Note:** article 56(2) of the *MiFID Org Regulation*]

Record keeping: insurance-based investment products

10A.7.2A UK 19(1)Without prejudice to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with [■ COBS 9A.2.1R, ■ COBS 9A.2.16R, ■ COBS 10A.2.1R and ■ COBS 10A.2.2R]. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.

19(3)In the case of an assessment of appropriateness undertaken in accordance with [■ COBS 10A.2.1R and ■ COBS 10A.2.2R], the record shall further include the following:

(a)the result of the appropriateness assessment;

(b)any warning given to the customer where the insurance-based investment product was assessed as potentially inappropriate for the customer, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance intermediary or insurance undertaking accepted the customer's request to proceed with concluding the contract;

(c)any warning given to the customer where the customer did not provide sufficient information to enable the insurance intermediary or insurance undertaking to assess the appropriateness of the insurance-based investment product, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance intermediary or insurance undertaking accepted the customer's request to proceed with concluding the contract.

[**Note:** article 19(1) and (3) of the *IDD Regulation*]

Record keeping: MiFID business and insurance-based investment products

10A.7.3 G A *firm* should refer to ■ SYSC 3.3 (for *insurers* and *managing agents*) and ■ SYSC 9 (for other *firms*) for its obligations in relation to record keeping. These provisions require records kept for the purposes of this chapter to be retained for a period of at least five years.

Chapter 11

Dealing and managing

11.1 Application

General application

11.1.1 R This chapter applies to a firm.

(1) [deleted]

(2) [deleted]

11.1.2 R Save as may be provided in the relevant sections, in this chapter, provisions marked "UK" apply to a *firm* which is not a *MiFID investment firm* as if they were *rules*.

11.1.3 R [deleted]

Application of section on personal account dealing

11.1.4 R The section on personal account dealing applies to the *designated investment business* of a *firm* in relation to activities carried on from an *establishment* in the *United Kingdom*.

11.1.5 G [deleted]

Disapplication of best execution for non-financial spreads

11.1.6 R The section on best execution (■ COBS 11.2A) does not apply to a *firm* when:

(1) executing orders: or

(2) placing orders with other entities for execution: or

(3) transmitting orders to other entities for execution;

in relation to a *spread-bet* which is not a *financial instrument*, where the *firm* has not made a *personal recommendation* in relation to that *spread-bet*.

Disapplication of best execution to CIS operators purchasing or selling own units

11.1.7 R The section on best execution (■ COBS 11.2 or ■ COBS 11.2B, as applicable) does not apply to a *firm* when, acting in the capacity of *operator* of a *regulated collective investment scheme*, it purchases or sells *units* in that *scheme*.

11.2 Best execution for AIFMs and residual CIS operators

Application

11.2.-7 G This section applies to:

(1) a small authorised *UK AIFM* and a *residual CIS operator* in accordance with ■ COBS 18.5.2R; and

(2) a *full-scope UK AIFM*, in accordance with ■ COBS 18.5A.3R.

11.2.-6 G In accordance with ■ COBS 18.5.4R, this section does not apply to a small authorised *UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* of a fund whose *fund* documents include a statement that best execution does not apply in relation to the *fund* and in which:

(1) no investor is a *retail client*; or

(2) no current investor in the *fund* was a *retail client* when it invested in the *fund*.

11.2.-5 G In accordance with ■ COBS 18.5A.8R, only the following provisions of this section apply to a *full-scope UK AIFM*:

■ COBS 11.2.5G;

■ COBS 11.2.17G;

■ COBS 11.2.23AR;

■ COBS 11.2.24R;

■ COBS 11.2.25R(1) and ■ COBS 11.2.26R, but only where an *AIF* itself has a governing body which can provide prior consent; and

■ COBS 11.2.27R, but only regarding the obligation on an *AIFM* to notify the *AIF* of any material changes to its order execution arrangements or execution policy.

11.2.-4 G A *firm* to which this section applies may comply with its obligations under this section by complying with the *rules* in ■ COBS 11.2B (Best execution for UCITS management companies).

Modifications

11.2.-3 G In accordance with ■ COBS 18.5.3R(1) and ■ COBS 18.5A.5R, references in this section to *customer* or *client* are to any *fund* for which the *firm* is acting or intends to act.

11.2.-2 G In accordance with ■ COBS 18.5.1AR and ■ COBS 18.5.3R(2), in the case of a small authorised *UK AIFM* of an unauthorised *AIF* which is a *collective investment scheme*, or a *residual CIS operator*, when a *firm* is required by the *rules* in this section to provide information to, or obtain consent from, a *fund*, the *firm* must ensure that the information is provided to, or consent obtained from, an investor or a potential investor in the *fund* as the case may be.

11.2.-1 G In accordance with ■ COBS 18.5.3R(3) and ■ COBS 18.5A.9R, references to the service of *portfolio management* in this section are to be read as references to the management by a *firm* of *financial instruments* held for or within the *fund*.

Obligation to execute orders on terms most favourable to the client

11.2.1 R A *firm* must take all reasonable steps to obtain, when executing orders, the best possible result for its *clients* taking into account the *execution factors*.

[**Note**: The Committee of European Securities Regulators (CESR) has issued a Question and Answer paper on best execution under the first Markets in Financial Instruments Directive (MiFID I, 2004/39/EU). This paper also incorporates the European Commission's response to CESR's questions regarding the scope of the best execution obligations under MiFID I. See 'CESR Questions & Answers: Best Execution under MiFID', May 2007, Ref: CESR/07-320]

11.2.1A R [deleted]

Application of best execution obligation

11.2.2 G The obligation to take all reasonable steps to obtain the best possible result for its *clients* (see ■ COBS 11.2.1 R) should apply to a *firm* which owes contractual or agency obligations to the *client*.

11.2.3 G [deleted]

11.2.4 G If a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all reasonable steps to obtain the best possible result for its *clients* if the *firm* executed that quote at the time the quote was provided, the *firm* will meet those same obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

11.2.5 G The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures or the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of *financial instruments*. For example, transactions involving a customised OTC *financial instrument* that involve a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving shares traded on centralised *execution venues*.

11.2.5A G

Best execution criteria

11.2.6 R When executing a *client* order, a *firm* must take into account the following criteria for determining the relative importance of the *execution factors*:

(1) the characteristics of the *client* including the categorisation of the *client* as retail or professional;

(2) the characteristics of the *client* order;

(3) the characteristics of *financial instruments* that are the subject of that order; and

(4) the characteristics of the *execution venues* to which that order can be directed.

(5) [deleted] *instrument constituting the fund*.

Role of price

11.2.7 R Where a *firm* executes an order on behalf of a *retail client*, the best possible result must be determined in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution, which must include all expenses incurred by the *client* which are directly related to the execution of the order, including *execution venue* fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

11.2.8 G For the purposes of ensuring that a *firm* obtains the best possible result for the *client* when executing a *retail client* order in the absence of specific *client* instructions, the *firm* should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution. Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.

11.2.9 G A *firm's* execution policy should determine the relative importance of each of the *execution factors* or establish a process by which the *firm* will determine the relative importance of the *execution factors*. The relative importance that the *firm* gives to those *execution factors* must be designed to obtain the best possible result for the execution of its *client* orders. Ordinarily, the *FCA* would expect that price will merit a high relative importance in obtaining the best possible result for *professional clients*. However, in some circumstances for some *clients*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible execution result.

Delivering best execution where there are competing execution venues

11.2.10 R For the purposes of delivering best execution for a *retail client* where there is more than one competing venue to execute an order for a *financial instrument*, in order to assess and compare the results for the *client* that would be achieved by executing the order on each of the *execution venues* listed in the *firm's* order execution policy that is capable of executing that order, the *firm's* own commissions and costs for executing the order on each of the eligible *execution venues* must be taken into account in that assessment.

11.2.11 G The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a *firm* to compare the differences in its own commissions which are attributable to differences in the nature of the services that the *firm* provides to *clients*.

11.2.12 R A *firm* must not structure or charge its commissions in such a way as to discriminate unfairly between *execution venues*.

11.2.13 G A *firm* would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charges a different commission or spread to *clients* for execution on different *execution venues* and that difference does not reflect actual differences in the cost to the *firm* of executing on those venues.

Requirement for order execution arrangements including an order execution policy

11.2.14 R A *firm* must establish and implement effective arrangements for complying with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, for its *client* orders, the best possible result in accordance with that obligation.

11.2.15 R The order execution policy must include, in respect of each class of *financial instruments*, information on the different *execution venues* where the *firm* executes its *client* orders and the factors affecting the choice of *execution venue*. It must at least include those *execution venues* that enable the *firm* to obtain on a consistent basis the best possible result for the execution of *client* orders.

11.2.16 G

(1) When establishing its execution policy, a *firm* should determine the relative importance of the *execution factors*, or at least establish the process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its *clients*.

(2) In order to give effect to that policy, a *firm* should select the *execution venues* that enable it to obtain on a consistent basis the best possible result for the execution of *client* orders.

(3) A *firm* should apply its execution policy to each *client* order that it executes with a view to obtaining the best possible result for the *client* in accordance with that policy.

(4) The obligation to take all reasonable steps to obtain the best possible result for the *client* should not be treated as requiring a *firm* to include in its execution policy all available *execution venues*.

11.2.17 G The provisions of this section which provide that costs of execution include a *firm's* own commissions or fees charged to the *client* for the provision of an *investment service* should not apply for the purpose of determining what *execution venues* must be included in the *firm's* execution policy.

11.2.18 G The provisions of this section as to execution policy are without prejudice to the general obligation of a *firm* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

Following specific instructions from a client

11.2.19 R

(1) Whenever there is a specific instruction from the *client*, the *firm* must execute the order following the specific instruction.

(2) A *firm* satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a *client* to the extent that it executes an order, or a specific aspect of an order, following specific instructions from the *client* relating to the order or the specific aspect of the order.

11.2.20 G When a *firm* executes an order following specific instructions from the *client*, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the *client* instructions relate. The fact that the *client* has given specific instructions which cover one part or aspect of the order should not be treated as releasing the *firm* from its best execution obligations in respect of any other parts or aspects of the *client* order that are not covered by such instructions.

11.2.21 G A *firm* should not induce a *client* to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the *client*, when the *firm* ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that *client*. However, this should not prevent a *firm* inviting a *client* to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the *firm*.

Information about the order execution policy

11.2.22 R A *firm* must provide appropriate information to its *clients* on its order execution policy.

11.2.23 R

(1) A *firm* must provide a *retail client* with the following details on its execution policy in good time prior to the provision of the service:

(a) an account of the relative importance the *firm* assigns, in accordance with the *execution criteria*, to the *execution factors*, or the process by which the *firm* determines the relative importance of those factors;

(b) a list of the *execution venues* on which the *firm* places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of *client* orders;

(c) a clear and prominent warning that any specific instructions from a *client* may prevent the *firm* from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

(2) This information must be provided in a *durable medium*, or by means of a website (where that does not constitute a *durable medium*) provided that the *website conditions* are satisfied.

11.2.23A R A *full-scope UK AIFM* must make available appropriate information on its execution policy required under article 27(3) of the *AIFMD level 2 regulation* (Execution of decisions to deal on behalf of the managed AIF) and on any material changes to that policy to the investors in of each *AIF* it manages.

11.2.24 R Where the order execution policy provides for the possibility that *client* orders may be executed outside a *regulated market* or an *MTF*, the *firm* must, in particular, inform its *clients* about this possibility.

Client consent to execution policy and execution of orders outside a regulated market or MTF

11.2.25 R

(1) A *firm* must obtain the prior consent of its *clients* to the execution policy.

(2) [deleted]

(3) [deleted]

11.2.26 R A *firm* must obtain the prior express consent of its *clients* before proceeding to execute their orders outside a *regulated market* or an *MTF*. The *firm* may obtain this consent either in the form of a general agreement or in respect of individual transactions.

Monitoring the effectiveness of execution arrangements and policy

11.2.27 R A *firm* must monitor the effectiveness of its order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements. The *firm* must notify *clients* of any material changes to their order execution arrangements or execution policy.

Review of the order execution policy

11.2.28 R

(1) A *firm* must review annually its execution policy, as well as its order execution arrangements.

(2) This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for the execution of its *client* orders on a consistent basis using the venues included in its execution policy.

Demonstration of execution of orders in accordance with execution policy

11.2.29 R

(1) A *firm* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.

(2) [deleted]

and article 25(5) of the *UCITS implementing Directive*]

Duty of portfolio managers, receivers and transmitters and management companies to act in clients' best interests

11.2.30 R A *firm* must, when providing the service of *portfolio management*, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

11.2.31 R A *firm* must, when providing the service of reception and transmission of orders, comply with the obligation to act in accordance with the best interests of its *clients* when transmitting *client* orders to other entities for execution.

11.2.32 R In order to comply with the obligation to act in accordance with the best interests of its *clients* when it places an order with, or transmits an order to, another entity for execution, a *firm* must:

(1) take all reasonable steps to obtain the best possible result for its *clients* taking into account the *execution factors*. The relative importance of these factors must be determined by reference to the *execution criteria* and, for *retail clients*, to the requirement to determine the best possible result in terms of the total consideration (see ■ COBS 11.2.7 R).

A *firm* satisfies its obligation to act in accordance with the best interests of its *clients*, and is not required to take the steps mentioned above, to the extent that it follows specific instructions from its *client* when placing an order with, or transmitting an order to, another entity for execution;

(2) establish and implement a policy to enable it to comply with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. The policy must identify, in respect of each class of instruments, the entities with which the orders are placed or to which the *firm* transmits orders for execution. The entities identified must have execution arrangements that enable the *firm* to comply with its obligations under this section when it places an order with, or transmits an order to, that entity for execution;

(3) provide appropriate information to its *clients* on the policy established in accordance with paragraph (2);

(4) monitor on a regular basis the effectiveness of the policy and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies; and

(5) review the policy annually. This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for its *clients*.

11.2.32A R [deleted]

11.2.33 G This section is not intended to require a duplication of effort as to best execution between a *firm* which provides the service of reception and transmission of orders or *portfolio management* and any *firm* to which that *firm* transmits its orders for execution.

11.2.34 R The provisions applying to a *firm* which places orders with, or transmits orders to, other entities for execution (see ■ COBS 11.2.30 R to ■ COBS 11.2.33 G) will not apply when the *firm* which provides the service of *portfolio management* or *collective portfolio management* and/or service of reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its *client's* portfolio. In those cases the requirements of this section for *firms* who execute orders apply (see ■ COBS 11.2.1 R to ■ COBS 11.2.29 R).

11.2A Best execution – MiFID provisions

11.2A.1 R

(1) Subject to (2) to (4), the following provisions apply to a *firm's* business other than *MiFID business* as if they were *rules*:

(a) provisions within this chapter marked "UK".

(b) [deleted]

(2) [deleted]

(3) This chapter does not apply (but ■ COBS 11.2B applies) to *UCITS management companies* when carrying on *scheme management activity*.

(4) This chapter does not apply (but ■ COBS 11.2 applies) to *AIFMs* when carrying on *AIFM investment management functions* and *residual CIS operators*.

Obligation to execute orders on terms most favourable to the client

11.2A.2 R

(1) A *firm* must take all sufficient steps to obtain, when executing orders, the best possible results for its *clients* taking into account the *execution factors*.

(2) The *execution factors* to be taken into account are price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order.

[**Note:** article 27(1) of *MiFID*]

Application of best execution obligation

11.2A.3 G

The obligation to take all sufficient steps to obtain the best possible result for its *clients* (see ■ COBS 11.2A.2) should apply where a *firm* owes contractual or agency obligations to the *client*.

[**Note:** recital 91 to, and article 27(1) of, *MiFID*]

11.2A.4 G

Dealing on own account with *clients* by a *firm* should be considered as the execution of *client* orders, and therefore subject to the requirements under *MiFID*, in particular, those obligations in relation to best execution.

[**Note:** first sentence, recital 103 to the *MiFID Org Regulation*]

11.2A.5 G

Dealing on own account when executing *client* orders includes the execution by *firms* of orders from different *clients* on a matched principal basis (back-to-back trading). Such activities are regarded as acting as *principal* and are subject to the requirements of this chapter in relation to both execution of orders on behalf of *clients* and *dealing on own account*.

[**Note:** recital 24 to *MiFID*]

11.2A.6 G

However if a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all sufficient steps to obtain the best possible result for its *clients* under ■ COBS 11.2A.2R if the *firm* executed that quote at the time it was provided, then the *firm* will meet those same obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

[**Note:** second sentence, recital 103 to the *MiFID Org Regulation*]

11.2A.7 G

The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures and the structure of financial instruments, it may be difficult to identify and apply a uniform standard of, and procedure for, best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied to take into account the different circumstances surrounding the execution of orders for particular types of *financial instruments*. For example, transactions involving a customised *OTC financial instrument* with a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving *shares* traded on centralised *execution venues*. As best execution obligations apply to all *financial instruments*, irrespective of whether they are traded on *trading venues* or *OTC*, *firms* should gather relevant market data in order to check whether the *OTC* price offered for a *client* is fair and delivers on the best execution obligation.

[**Note:** recital 104 to the *MiFID Org Regulation*]

Best execution criteria

11.2A.8 UK

64 (1) When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in [■ COBS 11.2A.2R]:

(a)the characteristics of the client including the categorisation of the client as retail or professional;

(b)the characteristics of the client order, including where the order involves a securities financing transaction (SFT);

(c)the characteristics of financial instruments that are the subject of that order;

(d)the characteristics of the execution venues to which that order can be directed.

For the purpose of this Article and Articles 65 and 66, 'execution venue' includes a regulated market, an MTF, an OTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the function performed by any of the foregoing.

(2) An investment firm satisfies its obligation under [■ COBS 11.2A.2R, ■ COBS 11.2A.3G, ■ COBS 11.2A.9R, ■ COBS 11.2A.12R and ■ COBS 11.2A.15R] to take all sufficient steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

(3)Investment firms shall not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

(4)When executing orders or taking decision to deal in OTC products including bespoke products, the investment firm shall check the fairness of the price proposed to the client, by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

Role of price

11.2A.9 R

Where a *firm* executes an order on behalf of a *retail client*, the best possible result must be determined in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution, which must include all expenses incurred by the *client* which are directly related to the execution of the order, including *execution venue* fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

[**Note:** article 27(1) of *MiFID*]

11.2A.10 G

When a *firm* executes a *retail client's* order in the absence of specific *client* instructions, for the purposes of ensuring that the *firm* obtains the best possible result for the *client*, the *firm* should take into consideration all factors that will enable it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution.

[**Note:** recital 101 to the *MiFID Org Regulation*]

11.2A.11 G Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.

[**Note:** recital 101 to the *MiFID Org Regulation*]

Following specific instructions from a client

11.2A.12 R Whenever there is a specific instruction from the client, a *firm* must execute the order following the specific instruction.

[**Note:** article 27(1) of *MiFID*]

11.2A.13 G When a *firm executes* an order following specific instructions from the *client*, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the *client* instructions relate. The fact that the client has given specific instructions which cover one part or aspect of the order should not be treated as releasing the *firm* from its best execution obligations in respect of any other parts or aspects of the *client* order that are not covered by such instructions.

[**Note:** recital 102 to the *MiFID Org Regulation*]

11.2A.14 G A *firm* should not induce a *client* to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the *client*, when the *firm* ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that *client*. However, this should not prevent a *firm* inviting a *client* to choose between two or more specified *trading venues*, provided that those venues are consistent with the execution policy of the *firm*.

[**Note:** recital 102 to the *MiFID Org Regulation*]

Delivering best execution where there are competing execution venues

11.2A.15 R A *firm's* own commissions and the costs for executing an order in each of the eligible *execution venues* must be taken into account when assessing and comparing the results that would be achieved for a *client* by executing the order on each of the *execution venues* listed in the *firm's* execution policy that is capable of executing that order.

[**Note:** article 27(1) of *MiFID*]

11.2A.16 G The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a *firm* to compare the differences in its own commissions which are attributable to differences in the nature of the services that the *firm* provides to *clients*.

[**Note:** recital 93 to *MiFID*]

11.2A.17 G A *firm* would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charged a different commission or spread to *clients* for execution on different execution venues and that difference did not reflect actual differences in the cost to the *firm* of executing on those venues.

[**Note:** recital 95 to *MiFID*]

11.2A.18 G The provisions of this section which provide that costs of execution include a *firm's* own commission or fees charged to the *client* for the provision of an investment service should not apply for the purpose of determining what *execution venues* must be included in the *firm's* execution policy in accordance with ■ COBS 11.2A.21R.

[**Note:** recital 94 to *MiFID*]

11.2A.19 R A *firm* must not receive any remuneration, discount or non-monetary benefit for routing *client* orders to a particular *trading venue* or *execution venue* which would infringe the requirements on conflicts of interests (as set out in ■ SYSC 10) or inducements as set out in ■ COBS 2.3 (for *firms* carrying on business other than *MiFID, equivalent third country or optional exemption business*) and in ■ COBS 2.3A, ■ COBS 2.3B and ■ COBS 2.3C (for *firms* carrying on *MiFID, equivalent third country or optional exemption business*).

[**Note:** article 27(2) of *MiFID*]

Requirement for order execution arrangements including an order execution policy

11.2A.20 R A *firm* must establish and implement effective arrangements for complying with the obligation to take all sufficient steps to obtain the best possible results for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, in accordance with ■ COBS 11.2A.2R, the best possible result for the execution of *client* orders.

[**Note:** article 27(4) of *MiFID*]

11.2A.21 R The order execution policy must include, in respect of each class of *financial instruments*, information on the different *execution venues* where the *firm* executes its *client* orders and the factors affecting the choice of *execution venue*. It must at least include those *execution venues* that enable the *firm* to obtain on a consistent basis the best possible result for the execution of *client* orders.

[**Note:** article 27(5) of *MiFID*]

11.2A.22 R

(1) A *firm* must provide appropriate information to its *clients* on its order execution policy.

(2) That information must explain clearly how orders will be executed by the *firm* for the *clients*.

(3) The information must include sufficient details and be provided in a way that can be easily understood by *clients*.

[**Note:** article 27(5) of *MiFID*]

11.2A.23 R

(1) A *firm* must obtain the prior consent of its *clients* to the execution policy.

[**Note:** article 27(5) of *MiFID*]

11.2A.24 R

(1) Where a *firm's* order execution policy provides for the possibility that *client* orders may be executed outside a *trading venue*, a *firm* must, in particular, inform its *clients* about that possibility.

(2) A *firm* must obtain the express prior consent of its *clients* before proceeding to execute their orders outside a *trading venue*.

(3) A *firm* may obtain such consent either in the form of a general agreement or in respect of individual transactions.

[**Note:** article 27(5) of *MiFID*]

Execution policies

11.2A.25 UK

66 (1) Investment firms shall review, at least on an annual basis execution policy established pursuant to [■ COBS 11.2A.20R], as well as their order execution arrangements.

Such a review shall also be carried out whenever a material change as defined in Article 65(7) occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy. An investment firm shall assess whether a material change has occurred and shall consider making changes to the relative importance of the best execution factors in meeting the overarching best execution requirement.

(2)The information on the execution policy shall be customised depending on the class of financial instrument and type of the service provided and shall include information set out in paragraphs 3 to 9.

(3)Investment firms shall provide clients with the following details on their execution policy in good time prior to the provision of the service:

(a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 59(1), to the factors referred to in [■ COBS 11.2A.2R], or the process by which the firm determines the relative importance of those factors.

(b)a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders and specifying which execution venues are used for each class of financial instruments, for retail client orders, professional client orders and SFTs;

(c)a list of factors used to select an execution venue, including qualitative factors such as clearing schemes, circuit breakers, scheduled actions, or any other relevant consideration, and the relative importance of each factor; The information about the factors used to select an execution venue for execution shall be consistent with the controls used by the firm to demonstrate to clients that best execution has been achieved in a consistent basis when reviewing the adequacy of its policy and arrangements;

(d)how the execution factors of price costs, speed, likelihood of execution and any other relevant factors are considered as part of all sufficient steps to obtain the best possible result for the client;

(e)where applicable, information that the firm executes orders outside a trading venue, the consequences, for example counterparty risk arising from execution outside a trading venue, and upon client request, additional information about the consequences of this means of execution;

(f)a clear and prominent warning that any specific instruction from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;

(g)a summary of the selection process for execution venues, execution strategies employed, the procedures and process used to analyse the quality of execution obtained and how the firms monitor and verify that the best possible results were obtained for clients.

That information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

(4)Where investment firms apply different fees depending on the execution venue, the firm shall explain these differences in sufficient detail in order to allow the client to understand the advantages and the disadvantages of the choice of a single execution venue.

(5)Where investment firms invite clients to choose an execution venue, fair, clear and not misleading information shall be provided to prevent the client from choosing one execution venue rather than another on the sole basis of the price policy applied by the firm.

(6) Investment firms shall only receive third-party payments that comply with [■ COBS 2.3A.5R, ■ COBS 2.3A.6R and ■ COBS 2.3A.7E] and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.

(7) Where an investment firm charges more than one participant in a transaction, in compliance with [■ COBS 2.3A.5R, ■ COBS 2.3A.6R and ■ COBS 2.3A.7E], the firm shall inform its client of the value of any monetary or non-monetary benefits received by the firm.

(8) Where a client makes reasonable and proportionate requests for information about its policies or arrangements and how they are reviewed to an investment firm, that investment firm shall answer clearly and within a reasonable time.

(9) Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total cost they incur.

11.2A.26 G

(1) When establishing its execution policy in accordance with ■ COBS 11.2A.20R a *firm* should determine the relative importance of the factors mentioned in ■ COBS 11.2A.2R(2), or at least establish the process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its *clients*.

(2) Ordinarily, the *FCA* would expect that price will merit a high relative importance in obtaining the best possible result for *professional clients*. However, in some circumstances for some *clients*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible execution result.

(3) In order to comply with the obligation of best execution, a *firm*, when applying the criteria for best execution for *professional clients*, will typically not use the same *execution venues* for *securities financing transactions* and other transactions. This is because the securities financing transactions are used as a source of funding subject to a commitment that the borrower will return equivalent securities on a future date and the terms of the *securities financing transactions* are typically defined bilaterally between the counterparties ahead of the execution. Therefore, the choice of *execution venues* for *securities financing transactions* is more limited than in the case of other transactions, given that it depends on the particular terms defined in advance between the *counterparties* and on whether there is a specific demand on those *execution venues* for the *financial instruments* involved. As a result, the order execution policy established by *firms* should take into account the particular characteristics of *securities financing transactions* and it should list separately *execution venues* used for *securities financing transactions*.

[**Note:** recital 99 to the *MiFID Org Regulation*]

11.2A.27 G A *firm* should apply its execution policy to each *client* order that it executes with a view to obtaining the best possible result for the *client* in accordance with that policy.

[**Note:** recital 99 to the *MiFID Org Regulation*]

11.2A.28 G The obligation to take all sufficient steps to obtain the best possible result for the *client* should not be treated as requiring a firm to include in its execution policy all available *execution venues*.

11.2A.29 G An *investment firm* executing orders should be able to include a single *execution venue* in their policy only where they are able to show that this allows them to obtain best execution for their *clients* on a consistent basis. *Investment firms* should select a single *execution venue* only where they can reasonably expect that the selected *execution venue* will enable them to obtain results for *clients* that are at least as good as the results that they could reasonably expect from using alternative *execution venues*. This reasonable expectation must be supported by relevant data or by other internal analyses conducted by *investment firms*.

[deleted]

[**Note:** recital 108 to the *MiFID Org Regulation*]

11.2A.30 G The provisions of this section as to execution policy are without prejudice to the general obligation of a *firm* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

[**Note:** recital 105 to the *MiFID Org Regulation*]

11.2A.31 R

(1) A *firm* must monitor the effectiveness of its order execution arrangements and execution policy to identify and, where appropriate, correct any deficiencies. In particular it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements taking into account relevant data or other internal analyses conducted by *investment firms*.[deleted]

(2) The *firm* must notify *clients* of any material changes to its order execution arrangements or execution policy.

[**Note:** article 27(7) of *MiFID*]

11.2A.32 R

(1) A *firm* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.

(2) A *firm* must be able to demonstrate to the *FCA*, at the request of that authority, its compliance with ■ COBS 11.2A.2R and with the related provisions in this chapter which require *firms* to execute orders on terms most favourable to the *client*.

[**Note:** article 27(8) of *MiFID*]

11.2A.33 G In order to obtain the best execution for a client, a *firm* should compare and analyse relevant data.

[**Note:** recital 107 to the *MiFID Org Regulation*]

Duty of portfolio managers, receivers and transmitters to act in client's best interest

11.2A.34 UK 65 (1) Investment firms, when providing portfolio management, shall comply with the obligation [■ COBS 2.1.1R] to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

(2) Investment firms, when providing the service of reception and transmission of orders, shall comply with the obligation under [■ COBS 2.1.1R] to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

(3)In order to comply with paragraphs 1 or 2, investment firms shall comply with paragraphs 4 to 7 of this Article and Article 64(4).

(4) Investment firms shall take all sufficient steps to obtain the best possible result for their clients taking into account the factors referred to in Article 27(1) of Directive 2014/65/EU. The relative importance of these factors shall be determined by reference to the criteria set out in Article 64(1) and, for retail clients, to the requirement under Article 27(1) of Directive 2014/65/EU.

An investment firm satisfies its obligations under paragraph 1 or 2, and is not required to take the steps mentioned in this paragraph, to the extent that it follows specific instructions from its client when placing an order with, or transmitting an order to, another entity for execution.

(5)Investment firms shall establish and implement a policy that enables them to comply with the obligation in paragraph 4. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the investment firm transmits orders for execution. The entities identified shall have execution arrangements that enable the investment firm to comply with its obligations under this Article when it places or transmits orders to that entity for execution.

(6) Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution.

Upon reasonable request from a client, investment firms shall provide its clients or potential clients with information about entities where the orders are transmitted or placed for execution.

(7) Investment firms shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 5 and, in particular, shall monitor the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

Investment firms shall review the policy and arrangements at least annually. Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for their clients.

Investment firms shall assess whether a material change has occurred and shall consider making changes to the execution venues or entities on which they place significant reliance in meeting the overarching best execution requirement.

A material change shall be a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

(8) This Article shall not apply where the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases, Articles 64 and 66 of this Regulation, and rules in [*COBS*] which were relied on immediately before exit to implement Article 27 of Directive 2014/65/EU shall apply.

11.2A.35 G This section is not intended to require a duplication of effort as to best execution between a *firm* which provides the service of reception and transmission of orders or *portfolio management* and any *firm* to which that *firm* transmits its orders for execution.

[**Note:** recital 106 to the *MiFID Org Regulation*]

11.2A.36 G A *firm* transmitting or placing orders with other entities for execution may select a single entity for execution only where the *firm* is able to show that this provides the best possible result for their *clients* on a consistent basis and where they can reasonably expect that the selected entity will enable them to obtain results for *clients* that are at least as good as the results that could reasonably be expected from using alternative entities for execution. This reasonable expectation should be supported by relevant data or by other internal analyses conducted by *investment firms*. [deleted]

[**Note:** recital 100 to the *MiFID Org Regulation*]

Providing information to clients on order execution

11.2A.37 R Following the execution of a transaction on behalf of a *client* a *firm* must inform the *client* of where the order was executed.

[**Note:** article 27(3) of *MiFID*]

11.2A.38 G [deleted]

11.2A.39 R [deleted]

11.2B Best execution for UCITS management companies

Application

11.2B.1 G This section applies to a *UCITS management company* when carrying on *scheme management activity*, in accordance with ■ COBS 18.5B.2R.

11.2B.2 G A *firm* that is subject to ■ COBS 11.2 (Best execution for AIFMs and residual CIS providers) may comply with its obligations under ■ COBS 11.2 by complying with the *rules* in this chapter.

11.2B.3 G References in this chapter to a *scheme* are to a *UCITS scheme*.

Obligation to execute orders on terms most favourable to the scheme

11.2B.4 R A *management company* must act in the best interests of each *scheme* it manages when *executing* decisions to deal on behalf of the *scheme*.

[**Note:** article 25(1) of the *UCITS implementing Directive*]

11.2B.5 R A *management company* must take all sufficient steps to obtain, when executing decisions to deal, the best possible result for each *scheme* it manages, taking into account:

(1) price;

(2) costs;

(3) speed;

(4) likelihood of execution;

(5) likelihood of settlement;

(6) order size and nature; and

(7) any other consideration relevant to the execution of the decision to deal,

(together the "*execution factors*").

[**Note:** article 25(2) first sentence of the *UCITS implementing Directive*]

11.2B.6 G

(1) The obligation to deliver the best possible result applies for all types of *financial instrument*. However, given the differences in market structures and the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of, and procedure for, best execution that would be valid and effective for all types of *financial instrument*.

(2) Best execution obligations should therefore be applied to take into account the different circumstances surrounding the execution of orders for particular types of *financial instrument*. For example, transactions involving a customised *OTC financial instrument* with a unique contractual relationship tailored to the circumstances of the *scheme* and the *management company* may not be comparable for best execution purposes with transactions involving *shares* traded on centralised *execution venues*.

(3) As best execution obligations apply to all *financial instruments*, irrespective of whether they are traded on *trading venues* or *OTC*, *management companies* should gather relevant market data to check whether the *OTC* price offered for a *scheme* is fair and delivers on the best execution obligation.

11.2B.7 R

A *management company* must determine the relative importance of the *execution factors*, taking into account the following criteria:

(1) the objectives, investment policy and risks specific to the *scheme*, as indicated in its *prospectus* or *instrument constituting the fund*;

(2) the characteristics of the order, including where the order involves a *securities financing transaction*;

(3) the characteristics of the *financial instruments* that are the subject of that order; and

(4) the characteristics of the *execution venues* to which that order can be directed.

[**Note:** article 25(2) second sentence of the *UCITS implementing Directive*]

11.2B.8 R

A *management company* must take into account its own commissions and costs for executing an order, when assessing and comparing the results that would be achieved for a *scheme* by executing the order on each of the *execution venues* listed in the *management company's* execution policy that is capable of executing that order.

11.2B.9 G

The requirement in ■ COBS 11.2B.8R that costs of execution include a *management company's* own commission or fees charged to the scheme should not apply for the purpose of determining which *execution venues* are included in the firm's execution policy in accordance with ■ COBS 11.2B.18R.

11.2B.10 R

A *management company* must not receive any remuneration, discount or non-monetary benefit for routing orders to a particular *trading venue* or *execution venue* which would infringe the requirements on conflicts of interest (in ■ SYSC 10) or inducements (in ■ COBS 2.3 and ■ COBS 18 Annex 1).

11.2B.11 R A *management company* must not structure or charge its *commission* in a way that discriminates unfairly between *execution venues*.

11.2B.12 G A *management company* would be considered to discriminate unfairly between *execution venues* if it charged a different commission or spread to *schemes* for execution on different *execution venues* and that difference did not reflect actual differences in the cost to the *management company* of executing on those venues.

11.2B.13 R When executing orders or taking decisions to deal in *OTC* products including bespoke products, the *management company* must check the fairness of the price proposed to the *scheme*, by gathering market data used to estimate the price of such products and, where possible, by comparing with similar or comparable products.

When executing orders or taking decisions to deal in OTC products including bespoke products, the management company must check the fairness of the price proposed to the scheme, by gathering market data used to estimate the price of such products and, where possible, by comparing with similar or comparable products.

11.2B.14 R A *management company* must act in the best interests of each *scheme* it manages when placing orders to deal on behalf of that *scheme* with other entities for execution.

[**Note:** article 26(1) of the *UCITS implementing Directive*]

11

11.2B.15 R

(1) A *management company* must take all sufficient steps to obtain the best possible result for each *scheme* it manages when placing orders to deal on behalf of that *scheme* with other entities, taking into account the *execution factors*.

(2) A *management company* must determine the relative importance of the *execution factors* in accordance with ■ COBS 11.2B.7R.

[**Note:** article 26(2) first and second sentences of the first paragraph of the *UCITS implementing Directive*]

11.2B.16 G This section is not intended to require a duplication of effort as to best execution between a *management company* and any firm with which that *management company* places its orders for execution.

11.2B.17 R

(1) A *management company* must establish and implement effective arrangements for complying with the obligation to take all sufficient steps to obtain the best possible result for each *scheme* it manages.

(2) In particular, the *management company* must establish and implement an order execution policy to allow it to obtain the best possible result for each *scheme* it manages when:

(a) executing orders on behalf of the *scheme* (in accordance with ■ COBS 11.2B.5R); and

(b) placing orders with other entities for execution (in accordance with ■ COBS 11.2B.15R(1)).

[**Note:** articles 25(3) first paragraph and 26(2) third sentence of the first paragraph of the *UCITS implementing Directive*]

11.2B.18 R

(1) The order execution policy must include, for each type of *financial instrument*, information on the different *execution venues* where the *management company* executes its *scheme* orders and the factors affecting the choice of *execution venue*.

(2) It must at least include *execution venues* that enable the *management company* to obtain the best possible result for the execution of *scheme* orders on a consistent basis.

11.2B.19 G

The obligation in ■ COBS 11.2B.17R does not require a *management company* to include all available *execution venues* in its execution policy.

11.2B.20 G

(1) When establishing its execution policy in accordance with ■ COBS 11.2B.17R(2), a *management company* should determine the relative importance of the *execution factors*, or at least establish the process by which it determines the relative importance of these factors.

(2) Ordinarily, the *FCA* would expect that price will merit a high relative importance in obtaining the best possible result. However, in some circumstances for some *schemes*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible result.

(3) A *management company*, when applying the criteria for best execution, will typically not use the same *execution venues* for *securities financing transactions* and other transactions. As a result, the order execution policy should take into account the particular characteristics of *securities financing transactions* and it should list separately *execution venues* used for *securities financing transactions*.

11.2B.21 R

(1) The order execution policy must identify, for each type of *financial instrument*, the entities with which orders are placed or to which the *management company* transmits orders for execution.

(2) The entities identified must have execution arrangements that enable the *management company* to comply with its obligations under this section when it places or transmits orders to that entity for execution.

[**Note:** article 26(2) fourth sentence of the first paragraph and first sentence of the second paragraph]

11.2B.22 G

(1) A *management company* may specify a single *execution venue*, or a single entity with which it places orders for execution, in its execution policy where it:

(a) is able to show that this allows it to obtain best execution, or, when placing orders for execution, the best possible result, for the *schemes* it manages on a consistent basis; and

(b) can reasonably expect that the selected *execution venue* or entity will enable it to obtain results for each *scheme* that are at least

as good as the results that it could reasonably expect from using alternative *execution venues* or entities.

(2) The reasonable expectation in (1)(b) should be supported by relevant data or by other internal analyses conducted by the *management company*.

[deleted]

11.2B.23 R A *management company* must be able to demonstrate that it has executed or placed orders on behalf of each *scheme* it manages in accordance with its execution policy.

[**Note:** articles 25(5) and 26(4) of the *UCITS implementing Directive*]

11.2B.24 G A *management company* should apply its execution policy to each *scheme* order that it executes with a view to obtaining the best possible result for the *scheme* in accordance with that policy.

11.2B.25 G The provisions of this section relating to execution policy are in addition to the general obligation of a *management company* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

11.2B.26 R

(1) A *management company* of an *ICVC* that is a *UCITS scheme* that is structured as an investment company, must obtain the prior consent of the *ICVC* or investment company to the execution policy.

(2) In the case of a *management company* that is the *ACD* of an *ICVC* that is a *UCITS scheme*, (1) does not apply where the *ACD* is the sole director of the *ICVC*.

[**Note:** article 25(3) first sentence of the second paragraph of the *UCITS implementing Directive*]

Monitoring and review of the order execution arrangements including the order execution policy

11.2B.27 R

(1) A *management company* must monitor the effectiveness of its order execution arrangements and policy on a regular basis to identify and, where appropriate, correct any deficiencies.

(2) A *management company* that places orders with other entities for execution must in particular monitor the execution quality of those entities on a regular basis to identify and, where appropriate, correct any deficiencies.

(3) A *management company* must assess, on a regular basis:

(a) whether the *execution venues* included in the order execution policy provide for the best possible result for the *schemes* it manages; and

(b) whether it needs to make changes to its execution arrangements taking into account relevant data or other internal analyses conducted by the *management company*.

[**Note:** article 25(4) first sentence, and article 26(3) first paragraph of the *UCITS implementing Directive*]

11.2B.28 R A *management company* must:

(1) (a) assess whether a material change has occurred in its order execution arrangements; and

(b) if so, consider making changes to the *execution venues* or entities on which it places significant reliance in meeting the overarching best execution requirement; and

(2) review its execution policy, as well as its order execution arrangements:

(a) at least annually; and

(b) whenever a material change occurs that affects the *management company's* ability to continue to obtain the best possible result for the *scheme*.

[**Note:** article 25(4) second sentence, and article 26(3) second paragraph of the *UCITS implementing Directive*]

11.2B.29 G For the purposes of ■ COBS 11.2B.28R, a material change is a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

11.2B.30 G A *management company* should compare and analyse relevant data to monitor and review their order execution arrangements.[deleted]

Information requirements

11.2B.31 R A *management company* must make available to the *unitholders* of each *scheme* it manages appropriate information on its execution policy and on any material changes to that policy.

[**Note:** articles 25(3) second sentence of the second paragraph and 26(2) second sentence of the second paragraph of the *UCITS implementing Directive*]

11.2B.32 R The information on the execution policy must:

(1) be customised depending on the type of *financial instrument* and type of service provided; and

(2) include the information in ■ COBS 11.2B.33R and ■ COBS 11.2B.35R(1) to ■ COBS 11.2B.35R(4).

11.2B.33 R A *management company* must make available the following details on its execution policy:

(1) an account of the relative importance the *management company* assigns to the *execution factors*, or the process by which the

management company determines the relative importance of the *execution factors*;

(2) a list of the *execution venues* on which the *management company* places significant reliance in meeting its obligation to take all reasonable steps to obtain the best possible result for the execution of *scheme* orders on a consistent basis, specifying which *execution venues* are used for each type of *financial instrument* and *SFT*;

(3) appropriate information about the *management company* and the entities chosen for execution;

(4) a list of the factors used to select an *execution venue* which:

(a) includes:

(i) qualitative factors such as clearing schemes, circuit breakers, scheduled actions, or any other relevant consideration; and

(ii) the relative importance of each factor; and

(b) is consistent with the controls used by the *management company* to demonstrate that best execution has been achieved on a consistent basis, when reviewing the adequacy of its policy and arrangements;

(5) how the *execution factors* of price, costs, speed, likelihood of execution and any other relevant factors are considered as part of all sufficient steps to obtain the best possible result for the *scheme*;

(6) where applicable:

(a) confirmation that the *management company* executes orders outside a *trading venue*;

(b) the consequences of this, for example counterparty risk arising from *execution* outside a *trading venue*; and

(c) a statement that additional information about the consequences of this means of *execution* is available on request; and

(7) a summary of:

(a) the selection process for *execution venues*;

(b) the execution strategies employed;

(c) the procedures and process used to analyse the quality of execution obtained; and

(d) how the *management company* monitors and verifies that the best possible results were obtained for the *schemes* it manages.

11.2B.34 R A *management company* must make the information in COBS 11.2B.31R available to *unitholders* or potential *unitholders*:

(1) in a *durable medium*; or

(2) by means of a website (where that does not constitute a *durable medium*) provided that the *website conditions* are satisfied; or

(3) in the *prospectus* of the *scheme*.

11.2B.35 R

(1) A *management company* must make information available about the inducements that the *management company* may receive from *execution venues* in accordance with ■ COBS 2.3 and ■ COBS 18 Annex 1.

(2) The information in (1) must at least:

(a) specify the fees charged by the *management company* to all counterparties involved in the transaction; and

(b) where the fees vary depending on the *scheme*, indicate the maximum fees or range of the fees that may be payable.

(3) Where a *management company* applies different fees depending on the *execution venue*, a *management company* must explain these differences in sufficient detail to allow *unitholders* to understand the advantages and the disadvantages of the choice of a particular *execution venue*.

(4) Where a *management company* charges more than one participant in a transaction, the *firm* must make information available about the value of any monetary or non-monetary benefits received by the *firm*, in compliance with ■ COBS 2.3.1R.

(5) Where a *unitholder* makes a reasonable and proportionate request to a *management company* for information about its policies or arrangements and how they are reviewed, that *management company* must answer clearly and within a reasonable time.

11.2B.36 R

[deleted]

11.2B.37 R

Upon reasonable request from a *unitholder* or potential *unitholder*, a *management company* must provide information about entities where orders are transmitted or placed for execution.

11.2C Quality of execution

11.2C.1 R [deleted]

11.2C.2 R [deleted]

11.3 Client order handling

General principles

11.3.1 R

(1) A *firm* (other than a *UCITS management company* providing *collective portfolio management* services) which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client* orders, relative to other orders or the trading interests of the *firm*.

[**Note:** paragraph 1 of article 28(1) of *MiFID*]

(2) These procedures or arrangements must allow for the execution of otherwise comparable orders in accordance with the time of their reception by the *firm*.

[**Note:** paragraph 2 of article 28(1) of *MiFID*]

(3) A *UCITS management company* providing *collective portfolio management* services, must establish and implement procedures and arrangements in respect of all *client* orders it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the *UCITS scheme* it manages.

[**Note:** article 27(1) first paragraph of the *UCITS implementing Directive*]

11.3.1A R

(1) Subject to (2) and (3) in this chapter provisions marked "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

(2) Provisions which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to all *firms* as guidance.

(3) COBS 11.3.4AUK, which reproduces article 67(2) of the *MiFID Org Regulation*, does not apply to a *UCITS management company*.

11.3.2 R [deleted]

Carrying out client orders

11.3.2A UK 67(1)Investment firms shall satisfy the following conditions when carrying out client orders:

(a)ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;

(b)carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market

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conditions make this impracticable, or the interests of the client require otherwise;

(c)inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

11.3.3 G For the purposes of the provisions of this section, orders should not be treated as otherwise comparable if they are received by different media and it would not be practicable for them to be treated sequentially.

[**Note:** recital 110 to the *MiFID Org Regulation*]

11.3.4 R Where a *management company* executes the order itself in the course of providing *collective portfolio management* services, it must take all reasonable steps to ensure that any *client financial instruments* or *client* funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate *UCITS scheme*.

[**Note:** article 27(1) third paragraph of the *UCITS implementing Directive*]

Settlement of executed orders

11.3.4A UK 67(2)Where an investment firm is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client financial instruments or client funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.

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11.3.5 R [deleted]

Use of information relating to pending client orders

11.3.5A UK 67(3)An investment firm shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

11.3.6 G Without prejudice to the *Market Abuse Regulation*, for the purposes of the provision on the misuse of information (see ■ COBS 11.3.5AEU), any use by a *firm* of information relating to a pending *client* order in order to deal on own account in the *financial instruments* to which the *client* order relates, or in related *financial instruments*, should be considered a misuse of that information. However, the mere fact that *market makers* or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling *financial instruments*, or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.

[**Note:** recital 110 to the *MiFID Org Regulation*]

Aggregation and allocation of orders

11.3.7 R [deleted]

Aggregation and allocation of orders

11.3.7A UK 68(1)Investment firms shall not carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:

(a)it is unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any client whose orders is to be aggregated;

(b)it is disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;

(c)an order allocation policy is established and effectively implemented, providing for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

11.3.7B R A *management company* must ensure that the order allocation policy referred to in article 68(1)(c) of the *MiFID Org Regulation*, reproduced at ■ COBS 11.3.7AUK, is in sufficiently precise terms.

[**Note:** article 28(1) of the *UCITS implementing Directive*]

11.3.8 R [deleted]

Partial execution of aggregated client orders

11.3.8A UK 68(2)Where an investment firm aggregates an order with one or more other client orders and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

Aggregation and allocation of transactions for own account

11.3.9 R [deleted]

Aggregation and allocation of transactions for own account

11.3.9A UK 69(1)Investment firms which have aggregated transactions for own account with one or more client orders shall not allocate the related trades in a way that is detrimental to a client.

11.3.10 R [deleted]

11.3.10A UK 69 (2) Where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to the firm.

Where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to the firm. Where an investment firm is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own

account proportionally, in accordance with its order allocation policy referred to in Article 68(1)(c).

11.3.11 R [deleted]

11.3.11A UK 69(3)As part of the order allocation policy referred to in Article 68(1)(c), investment firms shall put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.

11.3.12 G For the purposes of the provisions of this section, the reallocation of transactions should be considered as detrimental to a *client* if, as an effect of that reallocation, unfair precedence is given to the *firm* or to any particular person.

[**Note:** recital 109

to the *MiFID Org Regulation*]

11.3.13 G In this section, carrying out *client* orders includes:

(1) the *execution of orders on behalf of clients*;

(2) the placing of orders with other entities for execution that result from decisions to deal in *financial instruments* on behalf of *clients* when providing the service of *portfolio management* or *collective portfolio management*;

(3) the transmission of *client* orders to other entities for execution when providing the service of reception and transmission of orders.

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Transposition of client order handling provisions in the UCITS Implementing Directive

11.3.14 G (1) This section applies to a *UCITS management company* as a result of ■ COBS 18.5B.2R.

(2) The provisions of the *MiFID Org Regulation* reproduced in this section apply to a *UCITS management company* as a result of ■ COBS 11.3.1AR.

(3) Some of these provisions were used to transpose provisions of the *UCITS implementing Directive*, as set out in the table below:

MiFID Org Regulation Provision	COBS 11.3 provision	UCITS implementing Directive transposition
article 67(1)	COBS 11.3.2AUK	article 27(1) second paragraph
article 67(3)	COBS 11.3.5AUK	article 27(2)
article 68(1)	COBS 11.3.7AUK, as modified by	article 28(1)
article 68(2)	COBS 11.3.8AUK	article 28(2)
article 69(1)	COBS 11.3.9AUK	article 28(3)
article 69(2)	COBS 11.3.10AUK	article 28(4)

11.4 Client limit orders

Obligation to make unexecuted client limit orders public

11.4.-1 R In this chapter provisions marked "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

11.4.1 R Unless a *client* expressly instructs otherwise, a *firm* must, in the case of a *client limit order* in respect of shares admitted to trading on a *regulated market* or traded on a *trading venue* which is not immediately executed under prevailing market conditions, take measures to facilitate the earliest possible execution of that order by making public immediately that *client limit order* in a manner which is easily accessible to other market participants.

[**Note:** article 28(2) of *MiFID*]

11.4.2 G In respect of transactions executed between *eligible counterparties*, the obligation to disclose *client limit orders* should only apply where the counterparty is explicitly sending a *limit order* to a *firm* for its execution.

[**Note:** recital 105 to *MiFID*]

How client limit orders may be made public

11.4.3 EU [deleted]

11.4.3 UK 70 (1) A client limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue which have not been immediately executed under prevailing market condition as referred to in [■ COBS 11.4.1R] shall be considered available to the public when the investment firm has submitted the order for execution to a regulated market or a MTF or the order has been published by a person authorised to provide data reporting services under the Data Reporting Services Regulations 2017 and can be easily executed as soon as market conditions allow.

11.4.4 G [deleted]

11.4.4A G *Firms* may comply with the obligations in ■ COBS 11.4.1R, to make public unexecuted *client limit orders*, by transmitting the *client* limit order to a *trading venue*.

[**Note:** article 28(2) of *MiFID*]

Orders that are large in scale

11.4.5 R The obligation in ■ COBS 11.4.1R to make public a *limit order* is disapplied in respect of transactions that are large in scale compared with normal market as determined under article 4 of *MiFIR*.

[**Note:** article 28(2) of *MiFID*]

11.4.6 G [deleted]

11.5A Record keeping: client orders and transactions

11.5A.1 R

(1) Subject to (2), in this chapter provisions marked "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

(2) Provisions in this chapter which are marked "UK" do not apply to *corporate finance business* carried on by a *firm* which is not a *MiFID investment firm*.

Recording initial orders received from clients

11.5A.2 UK

74 An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV [reproduced below at ■ COBS 11.5A.4UK] to this Regulation to the extent they are applicable to the order or decision to deal in question.

Where the details set out in Section 1 of Annex IV to this Regulation are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, these details should be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014.

Record keeping in relation to transactions and order processing

11.5A.3 UK

75 Investment firms shall, immediately after receiving a client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the competent authority at least the details set out in Section 2 of Annex IV [reproduced below at ■ COBS 11.5A.5UK].

Where the details set out in Section 2 of Annex IV are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, they shall be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.

Minimum details to be recorded in relation to client orders and decisions to deal

11.5A.4 UK

Annex IV Section 1 of the *MiFID Org Regulation* makes provision for record keeping of *client* orders and decisions to deal.

1.Name and designation of the client

2.Name and designation of any relevant person acting on behalf of the client

3.A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision

4.A designation to identify the algorithm (Algo ID) responsible within the investment firm for the investment decision;

5.B/S indicator;

6.Instrument identification

7.Unit price and price notation

8.Price

9.Price multiplier

10.Currency 1

11.Currency 2

12.Initial quantity and quantity notation

13.Validity period

14.Type of the order

15.Any other details, conditions and particular instructions from the client

16. The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured according to the methodology prescribed in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 33 of Schedule 1.

Minimum details to be recorded in relation to transactions and order processing

11.5A.5 UK

1.Name and designation of the client

2.Name and designation of any relevant person acting on behalf of the client

3.A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision

4.A designation to identify the Algo (Ago ID) responsible within the investment firm for the investment decision

5.Transaction reference number

6.A designation to identify the order (Order ID)

7.The identification code of the order assigned by the trading venue upon receipt of the order

8.A unique identification for each group of aggregated clients' orders (which will be subsequently placed as one block order on a given trading venue). This identification should indicated "aggregated_X" with X representing the number of clients whose orders have been aggregated

9.The segment MIC code of the trading venue to which the order has been submitted

10.The name and other designation of the person to whom the order was transmitted

11.Designation to identify the Seller & the Buyer

12.The trading capacity

13.A designation to identify the Trader (Trader ID) responsible for the execution

14.A designation to identify the Algo (Algo ID) responsible for the execution

15.B/S indicator;

16.Instrument identification

17.Ultimate underlying

18.Put/Call identifier

19.Strike price

20.Upfront payment

21.Delivery type

22.Option style

23.Maturity date

24.Unit price and price notation

25.Price

26.Price multiplier

27.Currency 1

28.Currency 2

29.Remaining quantity

30.Modified quantity

31.Executed quantity

32. The date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

33.The date and exact time of any message that is transmitted to and received from the trading venue in relation to any events affecting an order. The exact time must be measured according to the methodology prescribed under the RTS on clock synchronisation.

34. The date and exact time any message that is transmitted to and received from another investment firm in relation to events affecting an order. The exact time must be measured according to the methodology prescribed in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

35.Any message that is transmitted to and received from the trading venue in relation to orders placed by the investment firm

36.Any other details and conditions that was submitted to and received from another investment firm in relation with the order

37.Each placed order's sequences in order to reflect the chronology of every event affecting it, including but not limited to modifications, cancellations and execution

38.Short selling flag

39.SSR exemption flag

40.Waiver flag

11.7 Personal account dealing

Application

11.7.-1 R This section does not apply to a *firm* in relation to *MiFID, equivalent third country or optional exemption business* (but see ■ COBS 11.7A (Personal account dealing relating to MiFID, equivalent third country or optional exemption business)).

Rule on personal account dealing

11.7.1 R A *firm* that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the *Market Abuse Regulation* or to other confidential information relating to *clients* or transactions with or for *clients* by virtue of an activity carried out by him or her on behalf of the *firm*:

(1) entering into a *personal transaction* which meets at least one of the following criteria:

(a) that *person* is prohibited from entering into it under the *Market Abuse Regulation*;

(b) it involves the misuse or improper disclosure of that confidential information;

(c) it conflicts or is likely to conflict with an obligation of the *firm* to a *customer* under the *regulatory system* or any other obligation of the *firm* under *MiFID* or the *UCITS Directive*;

(2) advising or procuring, other than in the proper course of his employment or contract for services, any other *person* to enter into a transaction in *designated investments* which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;

(3) disclosing, other than in the normal course of his or her employment or contract for services, any information or opinion to any other *person* if the *relevant person* knows, or reasonably ought to know, that as a result of that disclosure that other *person* will or would be likely to take either of the following steps:

(a) to enter into a transaction in *designated investments* which, if a personal transaction of the relevant person, would be covered by (1) or a relevant provision;

(b) to advise or procure another *person* to enter into such a transaction.

[**Note:** article 13(1) of the *UCITS implementing Directive*]

11.7.2 R For the purposes of this section, the relevant provisions are:

(1) the *rules* article 37(2)(a) and (b) of the *MiFID Org Regulation* on *personal transactions* undertaken by *financial analysts* copied out in ■ COBS 12.2.21EU which apply as *rules* as a result of ■ COBS 12.2.15R;

(2) article 67(3) of the *MiFID Org Regulation* on the misuse of information relating to pending *client* orders copied out in ■ COBS 11.3.5AEU which applies as a *rule* as a result of ■ COBS 11.3.1AR.

11.7.2A G The requirements of this section are without prejudice to the prohibition under article 14(c) of the *Market Abuse Regulation*.

11.7.3 G For the purposes of ■ COBS 11.7.1R (1)(c), any other obligation of the *firm* under the *UK* provisions which implemented *MiFID* refers to a *firm's* obligations under the *regulatory system* that are not owed to a *customer*.

11.7.4 R The arrangements required under this section must in particular be designed to ensure that:

(1) each *relevant person* covered by this section is aware of the restrictions on *personal transactions*, and of the measures established by the *firm* in connection with *personal transactions* and disclosure, in accordance with this section;

(2) the *firm*:

(a) is informed promptly of any *personal transaction* entered into by a *relevant person*, either by notification of that transaction or by other procedures enabling the *firm* to identify such transactions; or

(b) in the case of *outsourcing* arrangements, ensures that the service provider to which the activity is *outsourced* maintains a record of *personal transactions* entered into by any *relevant person* and provides that information to the *firm* promptly on request;

(3) a record is kept of the *personal transaction* notified to the *firm* or identified by it, including any authorisation or prohibition in connection with such a transaction.

[**Note:** article 13(2) of the *UCITS implementing Directive*]

Disapplication of rule on personal account dealing

11.7.5 R This section does not apply to the following kinds of *personal transaction*:

(1) *personal transactions* effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the *relevant person* or other *person* for whose account the transaction is executed;

(2) *personal transactions* in *units* or *shares* in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the *UCITS Directive* or are subject to supervision under the law of an

EEA State which requires an equivalent level of risk spreading in their assets, where the *relevant person* and any other *person* for whose account the transactions are effected, are not involved in the management of that undertaking;

(3) *personal transactions* in *life policies*.

[**Note:** article 13(3) of the *UCITS implementing Directive*]

11.7.6 R For the purposes of this section, a *person* who is not:

(1) a director, partner or equivalent, manager or *appointed representative* (or, where applicable, a *tied agent*) of the *firm*; or

(2) a director, partner or equivalent, or manager of any *appointed representative* (or where applicable, a *tied agent*) of the *firm*;

will only be a *relevant person* to the extent that they are involved in the provision of *designated investment business* or *collective portfolio management* services.

Successive personal transactions

11.7.7 R Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this section do not apply:

(1) separately to each successive transaction if those instructions remain in force and unchanged; or

(2) to the termination or withdrawal of such instructions, provided that any *financial instruments* which had previously been acquired pursuant to the instructions are not disposed of at the same time as the instructions terminate or are withdrawn.

Obligations under this section do apply in relation to a *personal transaction*, or the commencement of successive *personal transactions*, that are carried out on behalf of the same *person* if those instructions are changed or if new instructions are issued.

11.7A Personal account dealing relating to MiFID, equivalent third country or optional exemption business

Application

11.7A.1 R This chapter applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

11.7A.2 R

(1) Subject to (2), in this chapter provisions marked "UK" apply to a *firm* in relation to its *equivalent third country* or *optional exemption business* as if they were *rules*.

(2) In this chapter, provisions which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to a *firm* in relation to its business which is the *equivalent business of a third country investment firm* or *MiFID optional exemption business* as *guidance*.

11.7A.3 R A *firm* that conducts *designated investment business* must establish appropriate rules governing personal transactions undertaking by managers, *employees* and *tied agents*.

[**Note:** article 16(2) of *MiFID*]

Scope of personal transactions

11.7A.4 UK 28For the purposes of Article 29 and Article 37, a personal transaction shall be a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met:

(a)the relevant person is acting outside the scope of the activities he carries out in this professional capacity;

(b)the trade is carried out for the account of any of the following persons:

(i)the relevant person;

(ii)any person with who he has a family relationship, or with whom he has close links;

(iii)a person in respect of whom the relevant person has a direct or indirect material interest in the outcome of the trade, other than obtaining a fee or commission for the execution of the trade.

Requirements relating to personal transactions

11.7A.5 UK

29(1)Investment firms shall ensure that relevant persons do establish, implement and maintain adequate arrangements aimed at preventing the activities set out in paragraphs 2, 3 and 4 in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 7(1) of Regulation (EU) No 596/2014 or to other confidential information relating to clients or transactions with of for clients by virtue of an activity carried out by him on behalf of the firm.

(2)Investment firms shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:

(a)that person is prohibited from entering into it under Regulation (EU) No 596/2014;

(b)it involves the misuse or improper disclosure of that confidential information;

(c) it conflicts or is likely to conflict with an obligation of the investment firm under UK law on markets in financial instruments.

(3)Investment firms shall ensure that relevant persons do not advise or recommend, other than in the proper course of employment or contract for services, any other person to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraph 2 or Article 37(2)(a) or (b) or Article 67(3);

(4)Without prejudice to Article 10 (1) of Regulation (EU) No 596/2014, investment firms shall ensure that relevant persons do not disclose, other than in the normal course of his employment or contract for services, any information or opinion to any other person where the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

(a)to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraphs 2 or 3 or Article 37(2)(a) or (b) or Article 67(3);

(b)to advise or procure another person to enter into such a transaction.

(5)The arrangements required under paragraph 1 shall be designed to ensure that:

(a)each relevant person covered by paragraphs 1, 2, 3 and 4 is aware of the restrictions on personal transactions, and of the measures established by the investment firm in connection with personal transactions and disclosure, in accordance with paragraphs 1, 2, 3 and 4;

(b)the firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the firm to identify such transactions;

(c)a record is kept of the personal transaction notified to the firm of identified by it, including any authorisation or prohibition in connection with such a transaction.

In the case of outsourcing arrangements, the investment firm shall ensure that the firm to which the activity is outsourced maintains a record of

personal transactions entered into by any relevant person and provides that information to the investment firm promptly on request.

(6) Paragraphs 1 to 5 shall not apply to the following personal transactions:

(a)personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

(b) personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of the United Kingdom which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

11.7A.6 R

(1) Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this section do not apply:

(a) separately to each successive transaction if those instructions remain in force and unchanged; or

(b) to the termination or withdrawal of such instructions, provided that any *financial instruments* which had previously been acquired pursuant to the instructions are nor disposed of at the same time as the instructions terminate or are withdrawn.

(2) Obligations under this section do apply in relation to a *personal transaction*, or the commencement of successive *personal transactions*, that are carried out on behalf of the same *person* if those instructions are changed or if new instructions are issued.

[**Note:** recital 42 to the *MiFID Org Regulation*]

Regulatory Technical Standard 28 (RTS 28) [deleted]

Chapter 11A

Underwriting and placing

11A.1 Underwriting and placing

11A.1.1 R

(1) This chapter applies only to *MiFID or equivalent third country business*.

(2) Subject to (3), in this chapter provisions marked "UK" apply to the *equivalent business of a third country investment* as if they were *rules*.

(3) In this chapter, provisions which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to the *equivalent business of a third country investment firm* as *guidance*.

Requirements to provide specific information to issuer clients

11A.1.2 UK

38 (1) Investment firms which provide advice on corporate finance strategy, as set out in Paragraph 3 of Part 3A of Schedule 2 to the Regulated Activities Order, and provide the service of underwriting or placing of financial instruments, shall, before accepting a mandate to manage the offering, have arrangements in place to inform the issuer client of the following:

(a)the various financing alternatives available with the firm, and an indication of the amount of transaction fees associated with each alternative;

(b)the timing and the process with regard to the corporate finance advice on pricing of the offer;

(c)the timing and the process with regard to the corporate finance advice on placing of the offering;

(d)details of the targeted investors, to whom the firm intends to offer the financial instruments;

(e)the job titles and departments of the relevant individuals involved in the provision of corporate finance advice on the price and allotment of financial instruments; and

(f)firm's arrangements to prevent or manage conflicts of interest that may arise where the firm places the relevant financial instruments with its investment clients of with its own proprietary book.

Requirements to identify underwriting and placing operations and to ensure that adequate controls are in place to manage conflicts of interest

11A.1.3 UK

38(2)Investment firms shall have in place a centralised process to identify all underwriting and placing operations of the firm and record such information, including the date on which the firm was informed of potential underwriting and placing operations. Firms shall identify all potential conflicts of interest arising from other activities of the investment firm, or group, and implement appropriate management procedures. In cases where an investment firm cannot manage a conflict of interest by way of implementing appropriate procedures, the investment firm shall not engage in the operation.

(3)Investment firms providing execution and research services as well as carrying out underwriting and placing activities shall ensure adequate controls are in place to manage any potential conflicts of interest between these activities and between their different clients receiving those services.

Additional requirements in relation to pricings of offerings in relation to the issuance of financial instruments

11A.1.4 UK

39(1)Investment firms shall have in place systems, controls and procedures to identify and prevent or manage conflicts of interest that arise in relation to possible under-pricing or over-pricing of an issue or involvement of relevant parties in the process. In particular, investment firms shall as a minimum requirement establish, implement and maintain internal arrangements to ensure both of the following:

(a)that the pricing of the offer does not promote the interests of other clients or firm's own interests, in a way that may conflict with the issuer client's interests; and

(b)the prevention or management of a situation where persons responsible for providing services to the firm's investment clients are directly involved in decisions about corporate finance advice on pricing to the issuer client.

Application of requirements for information flows during equity IPOs

11A.1.4A R

■ COBS 11A.1.4BR to ■ COBS 11A.1.4FR apply to a *firm* that:

(1) has *agreed to carry on regulated activities* for a *client* that is an *issuer* ("the *issuer client*") that include underwriting or placing of *financial instruments*, where:

(a) those *financial instruments* ("relevant securities") are either:

(i) *shares*; or

(ii) *certificates representing certain securities* where the certificate or other instrument confers rights in respect of *shares*;

(b) the relevant securities are intended to be *admitted to trading* in the *UK* for the first time;

(c) the trading under sub-paragraph (b) is intended to be effected by an *admission to trading* on a *regulated market*; and

(d) an approved *prospectus* will be required in accordance with article 3 of the *Prospectus Regulation* for the relevant securities; and

(2) is intending to disseminate *investment research* or *non-independent research* on that *issuer client* or those relevant securities before the *admission to trading*.

Communications between the issuer and research analysts in equity IPOs

11A.1.4B R

(1) Unless it complies with paragraphs (2) and (3) a *firm* must prevent its staff involved in the production of *investment research* or *non-independent research* ("the *firm's* analysts") from being in communication with the *issuer client* and/or the *issuer client's* representatives outside of the *firm* ("the *issuer* team").

(2) Prior to the *firm's* analysts being in communication with the *issuer* team, the *firm* must ensure that a range of unconnected analysts (as defined in paragraph (4)) will have the opportunity (subject to ■ COBS 11A.1.4CR) either:

(a) to join the *firm's* analysts in any communication with the *issuer* team that is made or received before the *firm* disseminates any *investment research* or *non-independent research* about the *issuer client* or the relevant securities as described in ■ COBS 11A.1.4AR(1); or

(b) to be in communication with the *issuer* team in a way that satisfies the following conditions:

(i) the communication results in those unconnected analysts receiving or being given access to all the information that is:

(A) given by the *issuer* team to the *firm's* analysts during the relevant period; and

(B) relevant for the purposes of the *firm* producing any *investment research* or *non-independent research* on the *issuer client* or the relevant securities;

(ii) the information that each of those unconnected analysts receives or can access is identical;

(iii) that communication is completed before the end of the relevant period; and

(iv) the relevant period for the purposes of sub-paragraphs (2)(b)(i) and (2)(b)(iii) starts from the time at which this *rule* applies and ends at the time at which the *firm* disseminates any *investment research* or *non-independent research* on the *issuer client* or the relevant securities.

(3) (a) To select the range of unconnected analysts under paragraph (2) the *firm* must:

(i) undertake an assessment of the potential range of unconnected analysts for the purposes of paragraph (2); and

(ii) use that assessment to ensure that the range of unconnected analysts given the opportunity under paragraph (2) is one that, in the *firm's* reasonable opinion, has a reasonable prospect of enabling potential investors to undertake a better-informed assessment of the present or future value of the relevant securities based on a more diverse set of substantiated opinions, compared to a situation in which the only research available to potential investors is that

disseminated by *firms* providing the service of underwriting or placing to the *issuer client*.

(b) For its assessment and opinion under sub-paragraph (a) the *firm* may assume that an unconnected analyst that is given an opportunity to interact with the *issuer* team will publish an opinion on the *firm's issuer client* that will be available to potential investors.

(c) The *firm* must make a written record of its assessment and opinion under sub-paragraph (a) at the time at which it forms its opinion.

(d) The *firm's* record under sub-paragraph (c) must:

(i) set out the *firm's* process for conducting the assessment and forming the opinion under sub-paragraph (a);

(ii) identify the *firm's* staff that were involved in forming that opinion; and

(iii) explain the *firm's* consideration of the number and expertise of the unconnected analysts included in the range.

(e) The *firm* must retain the record made under sub-paragraph (c) for five years from the date on which it is made.

(4) An "unconnected analyst" means a *person* other than the *firm* or its staff:

(a) who does not provide the service of underwriting or placing of the same relevant securities to the same *issuer client*; and

(b) whose business or occupation may reasonably be expected to involve the production of research.

11A.1.4C R

(1) If an opportunity communicated to the range of unconnected analysts under ■ COBS 11A.1.4BR(2) is subject to any restrictions that would apply to any of the unconnected analysts that accept the opportunity, a *firm* must ensure that those restrictions would not unreasonably prevent, limit or discourage those unconnected analysts from producing and disseminating research on the *issuer client* or the relevant securities.

(2) The *firm* must also make and retain a written record of any such restrictions, regardless of whether the restrictions are subsequently applied to any unconnected analyst.

(3) The *firm* must make the record at the time the opportunity is communicated to the range of unconnected analysts.

(4) The *firm* must keep the record for a period of five years after the date it was made.

11A.1.4D E

(1) A restriction is unreasonable under ■ COBS 11A.1.4CR(1) if it prevents an unconnected analyst from producing and disseminating research in circumstances in which the *firm* that is subject to ■ COBS 11A.1.4CR is itself able to produce and disseminate *investment research* or *non-independent research*.

(2) Contravention of (1) may be relied upon as tending to establish non-compliance with ■ COBS 11A.1.4CR(1).

11A.1.4E R

(1) Where a *firm* acts in accordance with ■ COBS 11A.1.4BR(2)(b) then it must make and retain a written record of:

(a) the information on the *issuer* or the relevant securities that is given by the *issuer* team to the *firm's* analysts during the relevant period under ■ COBS 11A.1.4BR(2)(b)(iv); and

(b) the information on the *issuer* or the relevant securities that is given by the *issuer* team to each of the relevant unconnected analysts during the same period.

(2) The *firm* must make the record at the end of that period.

(3) The *firm* must keep the record for a period of five years after the date it was made.

Timing restrictions for disseminating research on equity IPOs

11A.1.4F R

(1) A *firm* must not disseminate *investment research* or *non-independent research* on the relevant *issuer client* or relevant securities as described in ■ COBS 11A.1.4AR(1) until after the relevant time in paragraph (2).

(2) The relevant time is:

(a) where a *firm* acts in accordance with ■ COBS 11A.1.4BR(2)(a), one *day* after the publication of the relevant document in paragraph (3); or

(b) otherwise, seven *days* after the publication of the relevant document in paragraph (3).

(3) The relevant document is:

(a) an approved *prospectus* regarding the relevant securities; or

(b) an approved *registration document* regarding the *issuer*.

(4) For this *rule*, publication of the relevant document means making the relevant document available to the public in accordance with article 21 of the *Prospectus Regulation*.

(5) This *rule* does not apply to a *firm* in circumstances where, as a result of the *firm's* analysts being prevented from being in communication with the *issuer* team, it has not needed to engage with any unconnected analysts for the purposes of ■ COBS 11A.1.4BR.

Further requirements concerning the provision of information

11A.1.5 UK

39(2)Investment firms shall provide clients with information about how the recommendation as to the price of the offering and the timings involved is determined. In particular, the firm shall inform and engage with the issuer client about any hedging or stabilisation strategies it intends to undertake with respect to the offering, including how these strategies may impact the issuer clients' interests. During the offering process, firms shall also take all reasonable steps to keep the issuer client informed about developments with respect to the pricing of the issue.

11A.1.6 UK

40(1)Investment firms placing financial instruments shall establish, implement and maintain effective arrangements to prevent recommendations on

placing from being inappropriately influenced by any existing or future relationships.

(2)Investment firms shall establish, implement and maintain effective internal arrangements to prevent or manage conflicts of interests that arise where persons responsible for providing services to the firm's investment clients are directly involved in decisions about recommendations to the issuer client on allocation.

(3) Investment firms shall not accept any third-party payments or benefits unless such payments or benefits comply with rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 which were relied on before IP completion day to implement requirements laid down in Article 24 of Directive 2014/65/EU. In particular, the following practices shall be considered not compliant with those requirements and shall therefore be considered not acceptable:

(a)an allocation made to incentivise the payment of disproportionately high fees for unrelated services provided by the investment firm ('laddering'), such as disproportionately high fees or commissions paid by an investment client, or disproportionately high volumes of business at normal levels of commission provided by the investment client as a compensation for receiving an allocation of the issue;

(b)an allocation made to a senior executive or a corporate officer of an existing or potential issuer client, in consideration for the future or past award of corporate finance business ('spinning');

(c)an allocation that is expressly or implicitly conditional on the receipt of future orders or the purchase of any other service from the investment firm by an investment client, or any entity of which the investor is a corporate officer.

(4)Investment firms shall establish, implement and maintain an allocation policy that sets out the process for developing allocation recommendations. The allocation policy shall be provided to the issuer client before agreeing to undertake any placing services. The policy shall set out relevant information that is available at that stage, about the proposed allocation methodology for the issue.

(5)Investment firms shall involve the issuer client in discussions about the placing process in order for the firm to be able to understand and take into account the client's interests and objectives. The investment firm shall obtain the issuer client's agreement to its proposed allocation per type of client for the transaction in accordance with the allocation policy.

11A.1.7 UK

41 (1) Investment firms shall have in place systems, controls and procedures to identify and manage the conflicts of interest that arise when providing investment service to an investment client to participate in a new issue, where the investment firm receives commissions, fees or any monetary or non-monetary benefits in relation to arranging the issuance. Any commissions, fees or monetary or non-monetary benefits shall comply with the requirements in [■ COBS 2.3A.5R to ■ COBS 2.3A.7E, ■ COBS 2.3A.15R, ■ COBS 2.3A.16R, ■ COBS 2.3A.19R and ■ COBS 6.2B.11R] and be documented in the investment firm's conflicts of interest policies and reflected in the firm's inducements arrangements.

(2)Investment firms engaging in the placement of financial instruments issued by themselves or by entities within the same group, to their own

clients, including their existing depositor clients in the case of credit institutions, or investment funds managed by entities of their group, shall establish, implement and maintain clear and effective arrangements for the identification, prevention or management of the potential conflicts of interest that arise in relation to this type of activity. Such arrangements shall include consideration of refraining from engaging in the activity, where conflicts of interest cannot be appropriately managed so as to prevent any adverse effects on clients.

(3)When disclosure of conflicts of interest is required, investment firms shall comply with the requirements in Article 34(4), including an explanation of the nature and source of the conflicts of interest inherent to this type of activity, providing details about the specific risks related to such practices in order to enable clients to make an informed investment decision.

(4) Investment firms which offer financial instruments issued that are by themselves or other group entities to their clients and that are included in the calculation of prudential requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council[1], the law of the United Kingdom or any part of the United Kingdom ("UK law") which was relied on before IP completion day to implement Directive 2013/36/EU of the European Parliament and of the Council[2] or Directive 2014/59/EU of the European Parliament and of the Council[3], shall provide those clients with additional information explaining the differences between the financial instrument and bank deposits in terms of yield, risk, liquidity and any protection provided in accordance with UK law which was relied on before IP completion day to implement Directive 2014/49/EU of the European Parliament and of the Council.

[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.l)

[2] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p.338)

[3] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulation (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.201, p190)

11A

Further requirements in relation to lending on provision of credit in the context of underwriting or placement

11A.1.8 UK

42(1)Where any previous lending or credit to the issuer client by an investment firm, or an entity within the same group, may be repaid with the proceeds of an issue, the investment firm shall have arrangements in place to identify and prevent or manage any conflicts of interest that may arise as a result.

(2)Where the arrangements taken to manage conflicts of interest prove insufficient to ensure that the risk of damage to the issuer client would be prevented, investment firms shall disclose to the issuer client the specific conflicts of interest that have arisen in relation to their, or group entities',

activities in a capacity of credit provider, and their activities related to the securities offering.

(3)Investment firms' conflict of interest policy shall require the sharing of information about the issuer's financial situation with group entities acting as credit providers, provided this would not breach information barriers set up by the firm to protect the interests of a client.

Record keeping requirements in relation to underwriting or placing

11A.1.9 UK Investment firms shall keep records of the content and timing of instructions received from clients. A record of the allocation decisions taken for each operation shall be kept to provide for a complete audit trail between the movements registered in clients' accounts and the instructions received by the investment firm. In particular, the final allocation made to each investment client shall be clearly justified and recorded. The complete audit trail of the material steps in the underwriting and placing process shall be made available to competent authorities upon request.

11A.2 Prohibition of future service restrictions

11A.2.1 R Unless exempted in ■ COBS 11A.2.2R, a *firm* must not enter into an agreement in writing with a *client* that contains a *future service restriction*.

11A.2.2 R ■ COBS 11A.2.1R does not apply to *future service restrictions* that:

(1) are included in an agreement in writing for the *firm* to provide a bridging loan; and

(2) only involve the *firm* providing the *primary market and M&A services* to which the bridging loan relates.

11A.2.3 R For the purposes of ■ COBS 11A2.2R, "bridging loan" means a loan provided to a client for the purpose of providing short-term financing, and with the commercial intention that it be replaced with another form of financing (such as a *debenture* issue or a *share* issue).

11A.2.4 G A loan could be considered a bridging loan for the purposes of ■ COBS 11A.2.3 when, for example:

(1) it is expressly documented that the intention of both parties is that the loan offers a temporary solution until the client is able to obtain longer-term financing from the capital markets or other future financing;

(2) it has a short term, typically of less than four years from signing, or the client is otherwise discouraged from retaining the loan as longer term financing, for example by stepping up the interest rates after an initial short period; and

(3) the terms provide that the proceeds from the future financing are used as mandatory pre-payment on the loan.

11A.2.5 G (1) Agreements for the provision of a specified or certain *primary market and M&A service* by the *firm* to the *client* are not prohibited by ■ COBS 11A.2.1R, even where that service will take place in the future.

(2) ■ COBS 11A.2.1R prohibits *future service restrictions* related to *primary market and M&A services* which may be required in the future but which, at the date of the agreement, are not yet specified or certain. *Future service restrictions* are prohibited because they prevent a *client* from freely deciding, as and when the need for *primary market and M&A services* arises, which *firm* to appoint to provide those services.

11A.2.6 G

(1) The *future service restrictions* prohibited by ■ COBS 11A.2.1R relate to services that will be provided in the future.

(2) An example of restrictions that would therefore not be caught are those which relate to the recuperation of *fees* for work already undertaken by a *firm* in relation to a particular service or transaction when the *client* decides to use another financial institution for the same service or transaction ('tailgunner clauses').

11A.2.7 G

(1) *Future service restrictions* bind the *client* to use the *firm* (or an *affiliated company*).

(2) Provisions in an agreement that only give a *firm* the right or opportunity to:

(a) pitch for future business; or

(b) be considered in good faith alongside other providers for future business; or

(c) match quotations from other providers, but which do not prevent the *client* from selecting the other providers,

are not *future service restrictions*. In these cases, the *client* is not obliged to use the *firm* (or an *affiliated company*).

Chapter 12

Investment research

12.1 Purpose and application

Purpose

12.1.1 G The purpose of this chapter is to:

(1) set out specific requirements relating to the production and dissemination of *investment research* and *non-independent research*; and

(2) provide *guidance* on matters in the *Market Abuse Regulation* relating to the disclosures to be made in, and about, *investment recommendations*.

Application: Who?

12.1.2 R This chapter applies to a *firm*.

(1) [deleted]

(2) [deleted]

Application: Where?

12.1.3 G [deleted]

12.2 Investment research and non-independent research

12.2.1	R	[deleted]
12.2.2	G	[deleted]
12.2.3	R	[deleted]
12.2.4	G	[deleted]
12.2.5	R	[deleted]
12.2.5A	G	[deleted]
12.2.6	G	[deleted]
12.2.7	G	[deleted]
12.2.8	G	[deleted]
12.2.9	G	[deleted]
12.2.10	R	[deleted]
12.2.11	G	[deleted]
12.2.12	G	[deleted]
12.2.13	G	[deleted]

Application

12.2.14 G This section applies to a *firm* that:

(1) produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, under its own responsibility or that of a member of its *group*; or

(2) produces or disseminates *non-independent research*.

12.2.15 R Where this section applies to a *firm* in relation to business other than its *MiFID business*, provisions in this section marked "UK"shall apply as if they were *rules*, other than those that copy out recitals, which shall apply as if they were *guidance*.

12.2.16 G

(1) This section applies to both *investment research* and *non-independent research*.

(2) *Non-independent research* is not presented as objective or independent and is accordingly considered a marketing communication.

(3) Both *investment research* and *non-independent research* are sub-categories of the type of information defined as an *investment recommendation* in ■ COBS 12.4.

Investment research and non-independent research

12.2.17 UK 36(1) For the purposes of Article 37 investment research shall be research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

(a)the research or information is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;

(b) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of UK law on markets in financial instruments.

Non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation

12.2.18 UK 36(2) A recommendation of the type covered by point (35) of Article 3(1) of Regulation (EU) 596/2014 that does not meet the conditions set out in paragraph 1 shall be treated as a marketing communication for the purposes of UK law on markets in financial instruments and investment firms that produce or disseminate that recommendation shall ensure that it is clearly identified as such.

Additionally, firms shall ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral

recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

Conflicts of interest

12.2.19 UK

37(1) Investment firms which produce, or arrange for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public, under their own responsibility or that of a member of their group, shall ensure the implementation of all the measures set out in Article 34(3) in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

The obligations in the first subparagraph shall also apply in relation to recommendations referred to in Article 36(2).

Recital 51

The measures and arrangements adopted by an investment firm to manage the conflicts of interests that might arise from the production and dissemination of material that is presented as investment research should be appropriate to protect the objectivity and independence of financial analysts and of the investment research they produce. Those measures and arrangements should ensure that financial analysts enjoy an adequate degree of independence from the interests of persons whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom the investment research is disseminated.

Recital 52

Persons whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom investment research is disseminated should include corporate finance personnel and persons involved in sales and trading on behalf of clients or the firm.

Recital 55

The concept of dissemination of investment research to clients or the public should not include dissemination exclusively to persons within the group of the investment firm. Current recommendations should be considered to be those recommendations contained in investment research which have not been withdrawn and which have not lapsed. The substantial alteration of investment research produced by a third party should be governed by the same requirements as the production of research.

12.2.20 G

(1) *Firms* which produce, or arrange for the production of, *investment research* or *non-independent research* are also reminded of their obligations under ■ SYSC 10 (Conflicts of interest).

(2) ■ COBS 12.2.19UK relates to the management of conflicts of interest in relation to *investment research*.

(3) In relation to *non-independent research*, *firms* may wish to consider whether conflicts arise in relation to:

(a) *relevant persons* trading in *financial instruments* that are the subject of *non-independent research* which they know the *firm*

has published or intends to publish before *clients* have had a reasonable opportunity to act on it (other than when the *firm* is acting as *market maker* in good faith and in the ordinary course of market making, or in the execution of an unsolicited *client* order); and

(b) the preparation of *non-independent research* which is intended first for internal use by the *firm* and then for later publication to *clients*.

Measures and arrangements required for investment research

12.2.21 UK 37(2)Investment firms referred to in the first subparagraph of paragraph 1 shall have in place arrangements designed to ensure that the following conditions are satisfied:

(a)financial analysts and other relevant persons do not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the investment firm, in financial instruments to which investment research relates, or in any related financial instruments, with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;

(b)in circumstances not covered by point (a), financial analysts and any other relevant persons involved in the production of investment research do not undertake personal transactions in financial instruments to which the investment research relates, or in any related financial instruments, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the firm's legal or compliance function;

(c)a physical separation exists between the financial analysts involved in the production of investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated or, when considered not appropriate to the size and organisation of the firm as well as the nature, scale and complexity of its business, the establishment and implementation of appropriate alternative information barriers;

(d)the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research do not accept inducements from those with a material interest in the subject-matter of the investment research;

(e)the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research do not promise issuers favourable research coverage;

(f)before the dissemination of investment research issuers, relevant persons other than financial analysts, and any other persons are not permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any purpose other than verifying compliance with the firm's legal obligations, where the draft includes a recommendation or a target price.

For the purposes of this paragraph, 'related financial instrument' shall be any financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument.

Recital 53

Exceptional circumstances in which financial analysts and other persons connected with the investment firm who are involved in the production of investment research may, with prior written approval, undertake personal transactions in instruments to which the research relates should include those circumstances where, for personal reasons relating to financial hardship, the financial analyst or other person is required to liquidate a position.

Recital 54

Fees, commissions, monetary or non-monetary benefits received by the firm providing investment research from any third party should only be acceptable when they are provided in accordance with requirements specified in Article 24(9) of Directive 2014/65/EU and Article 13 of Commission Delegated Directive (EU) 2017 / 593.

Recital 56

Financial analysts should not engage in activities other than the preparation of investment research where engaging in such activities are inconsistent with the maintenance of that person's objectivity. These include participating in investment banking activities such as corporate finance business and underwriting, participating in 'pitches' for new business or 'road shows' for new issues of financial instruments; or being otherwise involved in the preparation of issuer marketing.

12.2.21A G

(1) The phrase "participating in 'pitches' for new business" in Recital 56 to the *MiFID Org Regulation* would generally include a *financial analyst* interacting with an *issuer* to whom the *firm* is proposing to provide underwriting or placing services (including the *issuer's* representatives outside of the *firm* and any *person* who has an ownership interest in the *issuer*), until both:

(a) the *firm* that employs the *financial analyst* has *agreed to carry on regulated activities* that amount to underwriting or placing services for the *issuer*; and

(b) the extent of the *firm's* obligations to provide underwriting or placing services to the *issuer* as compared to the underwriting or placing services of any other *firm* that is appointed by the *issuer* for the same offering is confirmed in writing between the *firm* and *issuer*.

(2) (a) It may nevertheless be possible, in limited circumstances, for a *financial analyst's* interactions with any such *person* referred to under paragraph (1) to be entirely separate from the *firm's* 'pitches' such that the risk to their objectivity being impaired would be reasonably low.

(b) However, the *FCA* considers that would not be the case where the analyst is aware of the 'pitches', or may have reason to believe that the *firm* is conducting the 'pitches'.

(3) In any case a *firm* should recognise that any situation in which there is a connection between its 'pitches' and a *person* with whom its *financial analyst* interacts can give rise to a conflict of interest (see ■ SYSC 10 (Conflicts of interest) and the relevant provisions of the *MiFID Org Regulation*).

Exemptions from article 37(1) of the MiFID Org Regulation

12.2.22 UK

37(3) Investment firms which disseminate investment research produced by another person to the public or to clients shall be exempt from complying with paragraph 1 if the following criteria are met:

(a)the person that produces the investment research is not a member of the group to which the investment firm belongs;

(b)the investment firm does not substantially alter the recommendations within the investment research;

(c)the investment firm does not present the investment research as having been produced by it;

(d)the investment firm verifies that the producer of the research is subject to requirements equivalent to the requirements under this Regulation in relation to the production of that research, or has established a policy setting such requirements.

12.2.23 G

The *FCA* would expect a *firm's conflicts of interest policy* to provide for *investment research* to be published or distributed to its *clients* in an appropriate manner. For example, the *FCA* considers it will be:

(1) appropriate for a *firm* to take reasonable steps to ensure that its *investment research* is published or distributed only through its usual *distribution channels*;

(2) inappropriate for an *employee* (whether or not a *financial analyst*) to communicate the substance of any *investment research*, except as set out in the *firm's conflicts of interest policy*; and

(3) inappropriate for a *financial analyst* or other *relevant person* to prepare *investment research* which is intended first for internal use for the *firm's* own advantage, and then for later publication to its *clients* (in circumstances in which it might reasonably be expected to have a material influence on its *clients'* investment decisions).

12.2.24 G

The *FCA* would expect a *firm* to consider whether or not other business activities of the *firm* could create the reasonable perception that its *investment research* may not be an impartial analysis of the market in, or the value or prospects of, a *financial instrument*. A *firm* would therefore be expected to consider whether its *conflicts of interest policy* should contain any restrictions on the timing of the publication of *investment research*. For example, a *firm* might consider whether it should restrict publication of relevant *investment research* around the time of an investment offering.

12.4 Investment recommendations

Application

12.4.1 R [deleted]

12.4.1A UK [article 20 of the *Market Abuse Regulation*]

[**Note**: This section applies to a *person* that prepares or disseminates *investment recommendations*.]

12.4.2 G [deleted]

12.4.3 G [deleted]

Fair presentation and disclosure

12.4.4 R [deleted]

12.4.4A UK [article 20(1) of the *Market Abuse Regulation*]

12.4.5 R [deleted]

12.4.6 R [deleted]

Additional obligations in relation to fair presentation of recommendations

12.4.7 R [deleted]

12.4.8 G The disclosures required under article 20(3) of the *Market Abuse Regulation* may, if the *person* so chooses, be made by graphical means (for example by use of a line graph).

12.4.9 R [deleted]

Additional obligations for producers of investment recommendations in relation to disclosure of interests or conflicts of interest

12.4.10 R [deleted]

12.4.11 G A *person* may choose to disclose significant shareholdings above a lower threshold than is required by article 20(3) of the *Market Abuse Regulation*.

12.4.12 G [deleted]

12.4.13 G In relation to companies limited by shares and incorporated in Great Britain, the most meaningful measure of "total issued share capital" is likely to be the concept of "paid up and issued share capital" under the Companies Act 1985 or Companies Act 2006 (as applicable).

12.4.14 G Where article 20(3) of the *Market Abuse Regulation* requires a disclosure of the proportions of all *investment recommendations* published that are "buy", "hold", "sell" or equivalent terms, the *FCA* considers it important for these equivalent terms to be consistent and meaningful to the recipients in terms of the course of actions being recommended, particularly for non-equity material.

12.4.15 R [deleted]

12.4.16 R [deleted]

12.4.17 R [deleted]

Chapter 13

Preparing product information

13.1 The obligation to prepare product information

Non-PRIIP packaged products, cash-deposit ISAs and cash-deposit CTFs

13.1.1 R A *firm* must prepare:

(1) a *key features document* for each *non-PRIIP packaged product*, *cash-deposit ISA*, *cash-only lifetime ISA* and *cash-deposit CTF* it produces; and

(2) a *key features illustration* for each *non-PRIIP packaged product* it produces;

in good time before those *documents* have to be provided.

PRIIPs

13.1.1A G (1) The *PRIIPs Regulation* requires the manufacturer of a *PRIIP* to draw up a *key information document* in accordance with the *PRIIPs Regulation* before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*) in the *United Kingdom*.

[**Note:** article 5 of the *PRIIPs Regulation*]

(2) Since the *PRIIPs Regulation* imposes requirements in relation to the preparation of product information for *PRIIPs*, the *rules* in ■ COBS 13.1 to ■ COBS 13.4 do not apply to a *firm* in relation to the manufacture of a *PRIIP* (except where applicable to *Solvency II Directive information*). ■ COBS 13.5 and ■ COBS 13.6 continue to apply where relevant.

Application of the PRIIPs regulation to funds

13.1.1B G (1) A *UCITS management company* is exempt from the *PRIIPs Regulation* until 31 December 2026. These *firms* should continue to publish a *key investor information document* until that date (see ■ COLL 4.7).

(2) (a) A manager of a *fund* offered to retail investors in the *United Kingdom*, other than a *UCITS*, is able to benefit from this exemption where a the *United Kingdom* applies rules on the format and content of the *key investor information document*which implemented articles 78 to 81 of the *UCITS Directive* to that *fund* (see article 32(2) of the *PRIIPs Regulation*).

(b) The *FCA* has made *rules* for *authorised fund managers* of *non-UCITS retail schemes* to give them the choice of benefiting from this exemption (see ■ COLL 4.7).

(c) An *authorised fund manager* of a *non-UCITS retail scheme* offered to *retail clients* in the *United Kingdom* may, until 31 December 2026, draw up either:

(i) a *key information document* in accordance with the *PRIIPs Regulation*; or

(ii) a *NURS-KII document*.

[**Note:** Article 32(1) of the *PRIIPs Regulation* as amended by article 17(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019]

Information on life policies

13.1.2 R A *firm* must prepare the *Solvency II Directive information* for each *life policy* it effects:

(1) in a clear and accurate manner and in writing; and

(2) in an official language of the *State of the commitment*, or in another language if the *policyholder* so requests and the law of the *State of the commitment* so permits or the *policyholder* is free to choose the law applicable;

in good time before that information has to be provided.

[**Note:** article 185(1) and (6) of the *Solvency II Directive*]

13.1.2A G A *firm* that effects *life policies* which are also *PRIIPs* should consider whether it is also required to draw up a *key information document* in respect of those *life policies* in accordance with the requirements of the *PRIIPs Regulation*.

Exceptions

13.1.3 R A *firm* is not required to prepare:

(1) a *document*, if another *firm* has agreed to prepare it; or

(2) a *key features document* for:

(a) a *unit* in a *regulated collective investment scheme*; or

(b) [deleted]

(c) [deleted]

(d) a *stakeholder pension scheme*, or *personal pension scheme* that is not a *personal pension policy*, if the information appears with due prominence in another *document*; or

(e) an interest in an *investment trust savings scheme*; or

(3) a *key features illustration*:

(a) for a *unit* in a *regulated collective investment scheme*; or

(b) [deleted]

(c) if it includes in a *key features document*;

(i) the information from the *key features illustration*; and

(ii) the summary key information required by COBS 13.4.1AR; or

(d) [deleted]

(e) for an interest in an *investment trust savings scheme*.

(4) [deleted]

13.1.4 R [deleted]

13.2 Product information: production standards, form and contents

13.2.1 G When a *firm* prepares *documents* or information in accordance with this chapter, the *firm* should consider the *rules* on providing product information (■ COBS 14). Those *rules* require a *firm* to provide the product information in a *durable medium* or via a website that meets the *website conditions* (if the website is not a *durable medium*).

[**Note:** article 29(4) of the *MiFID implementing Directive*]

13.2.1A G When a *firm* prepares *documents* or information for a *life policy*, *personal pension* or *stakeholder pension* in accordance with this chapter, the *firm* should:

(1) consider the *rules* on communicating with clients (■ COBS 4). Those *rules* require a *firm* to ensure that a communication is fair, clear and not misleading. In particular, a *firm* should:

(a) take into account its target market's understanding of financial services when preparing *documents* and information;

(b) present information in a logical order;

(c) use clear and descriptive headings, and where appropriate, cross references and sub-headings to aid navigation;

(d) where possible, use plain language and avoid the use of jargon, unfamiliar or technical language;

(e) if it is necessary to use jargon, unfamiliar or technical language, provide accompanying explanations in plain language;

(f) use short sentences;

(g) (if the *key features illustration* is separate from the *key features document*) clearly cross-reference between the two and avoid duplication where possible;

(h) concentrate on key product information, cross reference to background information, detailed explanations and information about how to apply for the product; and

(i) avoid duplication and unnecessary disclaimers;

(2) taking into account the means of printing or display, consider whether the following can be used to improve the *client's* understanding of the product, in particular:

(a) design devices such as side annotations, shading, colour, bulleted lists, tables and graphics; and

(b) the type size, line width, line spacing, and use of white space; and

(3) ensure that the use of colour in a *document* does not disguise, diminish or obscure important information if that *document* is printed or photocopied in black and white.

13.2.2 R A *key features document* and a *key features illustration* must also:

(1) (if it is a *key features document*) be produced and presented to at least the same quality and standard as the sales or marketing material used to promote the relevant product;

(2) (if it is a *key features document*) display the *firm's* brand at least as prominently as any other;

(3) (if it is a *key features document* or a *key features illustration* which does not form an integral part of the *key features document*) include the 'Key facts' logo in a prominent position at the top of the *document*; and

(4) (if it is a *key features document* or a *key features illustration* which does not form an integral part of the *key features document*) include the following statement in a prominent position:

"The Financial Conduct Authority is a financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future reference".

13.2.3 G The *Solvency II Directive information* can be included in one or more of a *key features document*, a *key features illustration*, (where permitted by the *PRIIPs Regulation*) a *key information document* or any other *document*.

13.2.4 R The *documents* and information prepared in accordance with the *rules* in this chapter must not include anything that might reasonably cause a *retail client* to be mistaken about the identity of the *firm* that produced, or will produce, the product.

13.3 Contents of a key features document

General requirements

13.3.1 R A *key features document* must:

(1) include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a *retail client* to be able to make an informed decision about whether to proceed;

(2) explain:

(a) the arrangements for handling complaints about the product;

(b) that compensation might be available from the *FSCS* if the *firm* cannot meet its liabilities in respect of the product (if applicable);

(c) that a right to cancel or withdraw exists, or does not exist, and, if it does exist, its duration and the conditions for exercising it, including information about the amount a *client* may have to pay if the right is exercised, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which any notice must be sent;

(d) (for a *CTF*) that *stakeholder CTFs*, *cash-deposit CTFs* and *security-based CTFs* are available and which type the *firm* is offering; and

(e) (for a *personal pension scheme* that is not an *automatic enrolment scheme*) clearly and prominently, that *stakeholder pension schemes* are generally available and might meet the *client's* needs as well as the scheme on offer; and

(3) (for a *cash-only lifetime ISA*) include the information set out in COBS 14 Annex 1.

13.3.1A G When preparing a *key features document* for *pension annuity* and *drawdown pension* options *firms* should consider the information requirements for *firms* communicating with *clients* about their pension decumulation product options in COBS 19.4.12R and COBS 19.4.14R.

Additional requirements for non-PRIIP packaged products

13.3.2 R Table

A *key features document* for a *non-PRIIP packaged product* must:	
(1)	Include the title: 'key features of the [name of product]';

(2) describe the product in the order of the following headings, and by giving the following information under those headings:

Heading	Information to be given
'Its aims'	A brief description of the product's aims
'Your commitment' or 'Your investment'	What a *retail client* is committing to or investing in and any consequences of failing to maintain the commitment or investment
'Risks'	The material risks associated with the product, including a description of the factors that may have an adverse effect on performance or are material to the decision to invest
'Questions and Answers'	(in the form of questions and answers) the principle terms of the product, what it will do for a *retail client* and any other information necessary to enable a *retail client* to make an informed decision.

[**Note:** in respect of 'Risks', article 185(4) of the *Solvency II Directive*]

13.3.3 R [deleted]

13.3.4 R [deleted]

13.3.5 G [deleted]

13.4 Contents of a key features illustration

13.4.1 R A *key features illustration*;

(1) must include *appropriate charges information*;

(2) must include information about any interest that will be paid to *clients* on money held within a *personal pension scheme* bank account; and

(3) if it is prepared for a *non-PRIIP packaged product* which is not a *financial instrument*:

(a) must include a *standardised deterministic projection*;

(b) the *projection* and charges information must be consistent with each other so that:

(i) the same intermediate growth rate and assumptions about regular contributions are used;

(ii) a *projection* in nominal terms is accompanied by an effect of charges table and reduction in yield information in nominal terms; and

(iii) a *projection* in real terms is accompanied by an effect of charges table and reduction in yield information in real terms; and

(c) it may also include *stochastic projections* if there are reasonable grounds for believing that a *retail client* will be able to understand the *stochastic projection* except that the most prominent *projection* must be a *standardised deterministic projection*.

13.4.1A R (1) If ■ COBS 14.2.1R(3B), ■ (3C) or ■ (3D) applies, a *key features illustration* must also include the summary key information in ■ COBS 13.4.7R.

(2) There is no requirement to provide the summary key information in ■ COBS 13.4.7R if the *retail client* proposes to withdraw their pension scheme funds in full reducing the value of their rights to zero.

(3) Where (2) applies and a *retail client* subsequently does not withdraw their pension scheme funds in full reducing the value of their rights to zero, the *firm* must provide the *client* with the summary key information in ■ COBS 13.4.7R.

Exceptions

13.4.2 R When the *rules* in this chapter require a *key features illustration* to be prepared, it must not take the form of a *generic key features illustration*:

(1) unless there are reasonable grounds for believing that it will be sufficient to enable a *retail client* to make an informed decision about whether to invest; or

(2) if it is part of a *direct offer financial promotion* which contains a *personal recommendation*; or

(3) if a *personal pension scheme* or a *stakeholder pension scheme* is facilitating the payment of an *adviser charge*; or

(4) if a *group personal pension scheme* or a *group stakeholder pension scheme* is facilitating the payment of a *consultancy charge* and the combined effect of the *consultancy charges* facilitated by the product and the product charges is not consistent for all investors in the relevant group or sub-group; or

(5) unless it is prepared for groups or sub-groups of employees in a *group personal pension scheme* or a *group stakeholder pension scheme* and it contains:

(a) a *generic projection* which is prepared in accordance with ■ COBS 13 Annex 2 paragraph 1.3 and based on a default fund or other commonly selected fund;

(b) an effect of charges table calculated in accordance with ■ COBS 13 Annex 4 R paragraph 2 and contains additional rows that show a range of typical periods to retirement age; and

(c) reduction in yield information which is calculated in accordance with ■ COBS 13 Annex 4 R paragraph 3.3(2) and combines the product charge and, if applicable, the *consultancy charge*.

13.4.3 G A *generic key features illustration* is unlikely to be sufficient to enable a *retail client* to make an informed decision about whether to invest if the *premium* or investment returns on the product will be materially affected by the personal characteristics of the investor.

13.4.4 R There is no requirement under ■ COBS 13.4.1 R to include a *projection* in a *key features illustration*:

(1) for a single *premium life policy* bought as a pure investment product, a product with benefits that do not depend on future investment returns or any other product if it is reasonable to believe that a *retail client* will not need one to be able to make an informed decision about whether to invest; or

(2) if the product is a *life policy* that will be held in a *CTF* or sold with *basic advice* (unless the *policy* is a *stakeholder pension scheme*); or

(3) if a *retail client* proposes to withdraw the funds in full from their , *personal pension schemestakeholder pension scheme* or *drawdown pension* reducing the value of their rights to zero.

13.4.4A R Where ■ COBS 13.4.4R(3) applies, if a *retail client* subsequently does not withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing their rights to zero, the *firm* must provide the *client* with a *standardised deterministic projection*.

13.4.5 G Although there may be no obligation to include a *projection* in a *key features illustration*, where a *firm* chooses to include one, the *projection* should:

(1) Comply with the requirements in this section unless the *projection* relates to an investment that is a *financial instrument*.

(2) Where the *projection* relates to a *financial instrument*, the *firm* should comply with either:

(a) the requirements in article 44(6) of the *MiFID Org Regulation* (see ■ COBS 4.5A.14UK) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*); or

(b) the requirements in ■ COBS 4.6.7R where the *firm* is not carrying on *MiFID, equivalent third country or optional exemption business*.

Summary key information for income withdrawal or lump sum withdrawal

13.4.6 G The purpose of the summary key information is to present the main information from the *key features illustration* to assist a *retail client* to understand and engage with their chosen *income withdrawal* or *uncrystallised funds pension lump sum* arrangement.

13.4.7 R (1) The summary key information is:

(a) the value of the crystallised and uncrystallised funds in the *retail client's personal pension scheme*;

(b) the value of the *pension commencement lump sum*, if applicable;

(c) the projected value of the *retail client's personal pension scheme* or *stakeholder pension scheme* 5 and 10 years after the date of withdrawal;

(d) reduction in yield information prepared in real terms in accordance with ■ COBS 13 Annex 3 3R or ■ COBS 13 Annex 4 3R and presented as A% or D% accordingly;

(e) the *retail client's* age when their funds are projected to reduce to zero (if relevant);

(f) first year charges expressed in cash terms and determined in accordance with (2);

(g) if applicable, the following information about the *income withdrawal* or *uncrystallised funds pension lump sum* arrangement offered:

(i) an assumed start date;

(ii) for one-off payments, the withdrawal figure and date of withdrawal; and

(iii) if the *retail client* has chosen to take regular withdrawals or *uncrystallised funds pension lump sum* payments, the value of those withdrawals on an annual basis.

(2) The first-year *charges* must be determined on the basis of the level of *charges* that the *retail client* would be expected to pay in the first year in accordance with the *firm's* charging structure before any promotional discount or reduction is applied, and:

(a) where the effect of charges table has been prepared in accordance with ■ COBS 13 Annex 3 2.2R(2), using the amount representing the "effect of deductions to date" for the first year of the projection; or

(b) where the effect of charges table has been prepared in accordance with ■ COBS 13 Annex 4 2.2R, using the amount representing the difference between the values of "before charges are taken" and "after all charges are taken from this plan' for the first year of the projection.

13.4.8 G Charges information should be presented as prominently as any other information in the summary key information.

Presentation of summary key information

13.4.9 R (1) The summary key information must:

(a) be on the front page of the *key features illustration* or *key features document* (where ■ COBS 13.1.3R(3)(c) applies);

(b) not exceed a single side of A4-sized paper when printed; and

(c) include the 'Key facts' logo in a prominent position at the top of the document.

(2) The requirement in (1)(b) does not apply if a *retail client* asks for summary key information to be provided in an accessible format and the fulfilment of that request will necessitate the use of more than a single side of A4-sized paper.

13.5 Preparing product information: other projections

Projections for in-force products

13.5.1 R A *firm* that communicates a *projection* for an in-force *packaged product* which is not a *financial instrument*:

(1) must include a *standardised deterministic projection*;

(2) may also include a *stochastic projection* except that the most prominent *projection* must be a *standardised deterministic projection*; and

must follow the *projection rules* in ■ COBS 13 Annex 2.

13.5.1A R The requirement in ■ COBS 13.5.1R does not apply where a *retail client* proposes to withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing the value of their rights to zero.

Projections: other situations

13.5.2 R

(1) A *firm* that communicates a *projection* for a *packaged product* which falls within (2) must ensure that the *projection* is either a *standardised deterministic projection* or a *stochastic projection* in accordance with ■ COBS 13 Annex 2.

(2) This *rule* applies to a *packaged product* which is:

(a) not a *financial instrument* or an in-force *packaged product*; and

(b) either:

(i) a non-*PRIIP packaged product* for which a *key features illustration* is not required to be provided; or

(ii) a *PRIIP* where the *projection* is not in the *key information document*.

13.5.2A R The requirement in ■ COBS 13.5.2R does not apply where a *retail client* elects to withdraw the funds in full from their *personal pension scheme* or *stakeholder pension scheme* or *drawdown pension* reducing the value of their rights to zero.

13.5.2B G Where a *firm* communicates a *projection* for a *packaged product* that is a *financial instrument*, the following future performance requirements are likely to apply:

(1) article 44(6) of the *MiFID Org Regulation* (see ■ COBS 4.5A.14UK) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*; or

(2) ■ COBS 4.6.7R where the *firm* is not carrying on *MiFID, equivalent third country or optional exemption business*.

Exceptions to the projection rules: projections for more than one product

13.5.3 R A *firm* that communicates a *projection* of benefits for a *packaged product* which is not a *financial instrument*, as part of a combined *projection* where other benefits being projected include those for a *financial instrument* or *structured deposit*, is not required to comply with the projection rules in ■ COBS 13.4, ■ COBS 13.5 and ■ COBS 13 Annex 2 to the extent that the combined *projection* complies with the future performance requirements in either:

(1) article 44(6) of the *MiFID Org Regulation* (see ■ COBS 4.5A.14UK) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*; or

(2) ■ COBS 4.6.7R where the *firm* is not carrying on *MiFID, equivalent third country or optional exemption business*.

13.5.4 G The general requirement that communications be fair, clear and not misleading will nevertheless mean that a *firm* that elects to comply with the future performance rule in ■ COBS 4.6.7 R, or, if applicable, the requirement in article 44(6) of the *MiFID Org Regulation* (see ■ COBS 4.5A.14UK), will need to explain how the combined *projection* differs from other information that has been or could be provided to the client, including a *projection* provided under the *projection rules* in ■ COBS 13.4, ■ COBS 13.5 and ■ COBS 13 Annex 2. In particular, the *firm* should identify where a *projection* in real terms is required under ■ COBS 13.

13.6 Preparing product information: adviser and consultancy charges

13.6.1 R A *firm* that agrees to facilitate the payment of an *adviser charge* or *consultancy charge*, or an increase in such a charge, from a new or in-force *packaged product*, must prepare sufficient information for the *retail client* to be able to understand the likely effect of that facilitation, in good time before it takes effect.

13.6.2 G Where a *firm* agrees to facilitate the payment of an *adviser charge* or *consultancy charge* for a new *non-PRIIP packaged product*, it will satisfy the *rule* in ■ COBS 13.6.1R by including the *appropriate charges information* in the *key features illustration*.

Solvency II Directive Information

This annex belongs to ■ COBS 13.1.2 R (The Solvency II Directive information)

Information about the firm	
(1)	The *firm's* name and its legal form;
(2)	The name of the state in which the head office and, where appropriate, agency or branch concluding the contract is situated;
(3)	The address of the head office and, where appropriate, agency or branch concluding the contract; and
(3A)	A concrete reference to the *firm's SFCR* allowing the *policyholder* easy access to this information.
Information about the commitment	
(4)	Definition of each benefit and each option;
(5)	Term of the contract;
(6)	Means of terminating the contract;
(7)	Means of payment of *premiums* and duration of payments;
(8)	Means of calculation and distribution of bonuses;
(9)	Indication of surrender and paid-up values and the extent to which they are guaranteed;
(10)	Information on the *premiums* for each benefit, both main benefits and supplementary benefits, where appropriate;
(11)	For unit-linked *policies*, the definition of the units to which the benefits are linked;
(12)	Indication of the nature of the underlying assets for unit-linked *policies*;
(13)	Arrangements for application of the cancellation period or right to withdraw;
(14)	General information on the tax arrangements applicable to the type of *policy*;
(15)	The arrangements for handling complaints concerning contracts by *policyholders*, lives assured or *beneficiaries*under contracts including, where-appropriate, the existence of a complaints body (usually the Financial Ombudsman Service), without prejudice to the right to take legal proceedings; and
(16)	Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the *insurer* proposes to choose.
[**Note:** article 185(2) and (3) of the *Solvency II Directive*]	

Projections

This annex belongs to ■ COBS 13.4.1 R (Contents of a key features illustration), ■ COBS 13.5.1 R (Projections for in-force products) and ■ COBS 13.5.2 R (Projections: other situations).

R

Projections

1 Calculating standardised deterministic projections

1.1 A *standardised deterministic projection* must:

(1) include a *projection* of benefits at the lower, intermediate and *higher rates of return*;

(2) be rounded down; and

(3) show no more than three significant figures.

R

1.2 Calculating projections: additional requirements for a *personal pension scheme*and *stakeholder pension scheme*

(1) A *standardised deterministic projection* must be in real terms and be accompanied by information explaining why price inflation has been taken into account and that price inflation reduces the worth of all savings and investments.

(2) A *standardised deterministic projection* in real terms must be calculated using:

(a) the appropriate *lower*, *intermediate* and *higher rates of return*;

(b) the intermediate rate of price inflation, in accordance with COBS 13 Annex 2 2.5R; and

(c) an annuity calculated in accordance with COBS 13 Annex 2 3.1R.

(3) The *standardised deterministic projection* must show only the numeric value of the three real rates of return after the appropriate price inflation assumption has been taken into account, that is, the real rate of projected growth which has been applied to the real value of the contributions.

G

1.2A A *firm* may provide a *retail client* with a *projection* in nominal terms:

(1) of their fund or *pension commencement lump sum* for planning purposes (for example for a pension mortgage); or

(2) of a *pension commencement lump sum* or *income withdrawal* or *uncrystallised funds pension lump sum* if the *retail client* requests it,

if the *projection* is prepared in a way which is consistent with the *standardised deterministic projection*.

R

1.3 (1) If a *generic projection* is prepared for a *stakeholder pension scheme* or *personal pension scheme* in circumstances where a *generic key features illustration* is permitted under COBS 13.4.2 R, sufficient separate *projections*, covering a range of different contractual periods and contributions, must be included for a *retail client* to be able to make an informed decision about whether to invest.

(2) A *projection* prepared on that basis may omit projections at the *lower* and *higher rates of return* and only show a range of benefits in real terms at the *intermediate rate of return*.

G

1.4 A *firm* will provide sufficient separate *projections* if it prepares a table that shows *projections* in real terms for a variety of periods to maturity and a variety of contribution levels, taking into account the *charges* and other material terms that apply to the *stakeholder pension scheme* or *personal pension scheme*. Such a table could be laid out like a specimen benefits table (see COBS 13 Annex 2 1.8).

R

Providing a stochastic projection

1.5 A *stochastic projection* may only be provided if:

(1) [deleted]

(2) [deleted]

[deleted]

(3)

[deleted]

(4) it is based on a reasonable number of simulations and assumptions which are reasonable and supported by objective data;

(5) it is accompanied by enough information for the *retail client* to be able to understand the difference between the *stochastic projection* and the *standardised deterministic projection* being provided; and

(6) it is presented in real terms where the accompanying *standardised deterministic projection* is required to be in real terms.

1.6 [deleted]

R

Exceptions

1.7

A *projection* for an in-force product that will mature in six *months* or less may be prepared and presented on any reasonable basis.

1.7A If a *projection* is prepared in connection with an offer for or conclusion of a *personal pension scheme*, three different rates of return must be used.

[**Note:** article 185(5) of the *Solvency II Directive*]

R

1.8 In the case of a *stakeholder pension scheme* in circumstances where a *generic key features illustration* is permitted under COBS 13.4.2R, the specimen benefits table, contained within the "Stakeholder pension decision tree" factsheet available on https://www.moneyhelper.org.uk and headed "Pension Table...How much should I save towards a pension?" which sets out initial monthly pension amounts, may be used instead of a *standardised deterministic projection* but only if it is accompanied by an explanation of the caveats and assumptions behind the table.

R

1.9 The *rules* in this Annex do not apply to:

(1) a *projection* for an in force product which is consistent with the *statutory money purchase illustration* requirements; and

(2) a *safeguarded-flexible benefits risk warning*.

R

1.10 A *standardised deterministic projection* for an in force product may omit the *intermediate rate of return* except for *personal pension scheme* and *stakeholder pension scheme* contracts taken out after 5 April 2014.

R

2 Assumptions to follow when calculating projections.

Assumptions: projection date

2.1 A *standardised deterministic projection* must be calculated to the *projection date* described below:

	Product	Projection date
(1)	A contract which is a *whole life assurance* the *premiums* under which are regular *premiums*	The anniversary of the commencement date: (a) which first falls after the seventy-fifth birthday of the life assured; or (b) (if there is more than one life assured) the anniversary of the commencement date which falls after the seventy fifth birthday of: (i) (if benefits are payable on the first death) the oldest life assured; or (ii) (in all other cases) the youngest life assured; subject to a minimum *projection date* of ten years.
(2)	A contract that is not in (1): (a) where the relevant marketing refers to a surrender value or an option to take benefits before they would otherwise be paid; or (b) that is open-ended, or linked to one or more lives, which is not a *personal pension scheme* or *stakeholder pension scheme*	An appropriate date which highlights the features of the product
(3)	A contract that is not in (1) or (2) and has a specified maturity date	The maturity date specified in the contract
(4)	A contract that is not in (1) or (2) or (3)	The tenth anniversary of the commencement date

R

Assumptions: contributions

2.2 A *standardised deterministic projection* must:

(1) take account of all contributions due during the *projection period*;

(2) be calculated on the basis that contributions are accumulated, net of *charges*, at the appropriate rate of return compounded on an annual basis;

(3) (if it includes assumptions about contribution increases in line with an index) be based on an assumption that contribution increases are consistent with any assumptions regarding that index in this annex; and

(4) deduct from contributions any rider benefits or extra *premium* which may be charged for an increased underwriting risk.

R

Assumptions: rates of return

2.3 A *standardised deterministic projection* must be calculated as follows:

(i) the *intermediate rate of return* must accurately reflect the investment potential of each of the product's underlying investment options;

(iii) the *lower* and *higher rates of return* must maintain a differential of 3% relative to the *intermediate rate of return*; and

(iii) the rates of return for each underlying investment option must not exceed the following maximum rates:

Nominal rates	Lower rate	Inter-mediate rate	Higher rate
tax-exempt business held in a *wrapper* or by a *friendly society*	2%	5%	8%
personal pension schemes, *stakeholder pension schemes* and investment-linked annuities			
all other products	1½%	4½%	7½%

R

Exceptions

2.4 A *standardised deterministic projection*:

(1) [deleted]

(2) may be calculated using a lower rate of return if a *retail client* requests it; and

(3) where there is a contractual obligation to provide a minimum rate of return that exceeds any one or more of the *lower*, *intermediate* or *higher rates of return*, the *standardised deterministic projection* must be calculated by substituting the obligated rate of return for the *lower*, *intermediate* or *higher rate of return*, as appropriate.

R

Assumptions: inflation

2.5 If inflation is taken into account, the *standardised deterministic projection* must be calculated using the following rates:

	Lower rate	Inter-mediate rate	Higher rate
Price inflation	0.00%	2.00%	4.00%
Earnings inflation	≥1.5%	≥3.5%	≥5.5%

2.5A R If inflation is taken into account, and the level of future contributions, *charges* or benefits is linked to *RPI*, the *standardised deterministic projection* must be calculated using the following rates in respect of those future contributions, *charges* or benefits:

	Lower rate	Inter-mediate rate	Higher rate
RPI price inflation	1.00%	3.00%	5.00%

R

Assumptions: charges

2.6 The *charges* allowed for in a *standardised deterministic projection*:

(1) must properly reflect:

(a) all of the charges, expenses and deductions a *client* will, or may expect to be taken after investment into the product;

(b) the tax relief available to the *firm* in respect of so much of the *firm's* gross expenses as can properly be attributed to the contract; and

(c) the fact that certain *charges* will be fully or partially off-set, but only to the extent that the *firm* can show that the off-set funds will be available when the relevant *charges* arise; and

(2) must not include the *firm's* dealing costs incurred on the underlying portfolio; and

(3) must include the retained interest *charges* specified in COBS 13 Annex 3 1.1R(4) or COBS 13 Annex 4 1.1R(4), where relevant.

G

2.7 (1) Development and capital costs should normally be written off in the year in which they are incurred. However, some costs (for example, exceptional new business expenses) may be amortised and previous years' costs may then be brought into account.

(2) If it is reasonable to assume that higher expenses will be incurred in the future, appropriate allowances should be made, and any inflation assumptions should be consistent with those prescribed in these rules.

(3) Expenses should be apportioned appropriately between products so that scales of expenses can be calculated and applied.

(4) Where appropriate, mortality and morbidity should be allowed for on a best estimate basis. The basis for annuities should allow for future improvements in mortality.

(5) A projection should not assume that *charges* will fall over time to a rate that is lower than the rate currently being charged on the relevant product (or, if there is no such charge, on a similar product).

(6) A projection of surrender value, cash-in value or transfer value should take into account any specific current surrender value basis and penalties which may be applied.

(7) If a *personal pension scheme* is invested in assets that are volatile or difficult to value, the *standardised deterministic projection* should be prepared using the best available reasonable assumptions.

(8) The methodology for a projection including retained interest *charges* should:

(a) take account of any required minimum cash balances;

(b) be based on reasonable assumptions such that the overall charges in relation to the product and the investments are unlikely to be understated; and

(c) have regard to the overall level of retained interest *charges* across all relevant business.

R

Additional requirements: with-profits policies

2.8 (1) A *standardised deterministic projection* for a *with-profits policy* must properly reflect the deductions from asset share which a *firm* expects to make in accordance with its *deductions plan*.

(2) A *standardised deterministic projection* for a *with-profits policy* where bonus rates apply must assume that the bonus rates supported by the relevant premium and rate of return apply throughout the term of the contract.

R

Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum* payments

2.9 (1) A *standardised deterministic projection* for a *drawdown pension* or regular *uncrystallised funds pension lump sum* payments must be based on the requirements contained in (2) to the extent that they impose additional or conflicting requirements to the balance of the *rules* in this section.

(2) A *standardised deterministic projection* for a *drawdown pension* or regular *uncrystallised funds pension lump sum* payments must include:

(a) where relevant the maximum initial income specified in the tables published by the Government Actuaries Department for a *drawdown pension*;

(b) the assumed level of income;

(c) for a *short-term annuity*, where subsequent *short-term annuities* are assumed, a statement reflecting that fact;

(d) (under 'What the benefits might be' or similar heading, either:

(i) the amount of income and the projected value of the fund at five yearly intervals to age 99 for the *lower*, *intermediate* and *higher rate of return* for as long as the fund is projected to exist (at the *higher rate of return*); or

(ii) a description of the income and a projection of the age at which the fund will cease to exist for the *lower*, *intermediate* and *higher rate of return*; and

(e) [deleted]

(f) the amount of annuity that could be secured using an immediate annuity rate available in the market.

(3) A *standardised deterministic projection* for a *drawdown pension* or regular *uncrystallised funds pension lump sum* payments may also include the projected open market values and the amounts of annuity that might be purchased at some point in the future.

(4) A *standardised deterministic projection* for a *drawdown pension* entered into before 6 April 2015 must, where relevant, be based on an assumption that the current gilt index yield will continue to apply throughout the relevant term.

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2.10

[deleted]

R

3 How to calculate a projection for a future annuity

3.1 A *projection* for a future annuity must:

(1) be calculated by rounding all factors to three decimal places before applying them to the relevant retirement fund;

(2) use a mortality rate based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables PMA08 and PFA08 and including mortality improvements derived from each of the male and female annual mortality projection models, in equal parts;

(3) [deleted]

(4) (for an annuity where two lives are concerned):

(a) reflect the age difference between the two lives; or

(b) be based on the assumption that the male life is three years older than the female (if the genders differ) or the two lives have the same age (if the genders are the same);

(5) include an expenses allowance of 4%;

(6) be based on the following rates of return as appropriate:

R

	Lower rate	Intermediate rate	Higher rate
Level or fixed rate	Y+1.5%	Y+3.5%	Y+5.5%

of increase annuities			
RPI or LPI linked annuities	Y-1%	Y	Y+1%

R

where:

'Y' is 0.5* (ILG0 + ILG5)-0.5 rounded to the nearest 0.2%, with an exact 0.1% rounded down; and

'ILG0' and 'ILG5' are the real yield on the FTSE Actuaries Government Securities Index-linked Real Yields over 5 years, assuming 0% and 5% inflation respectively, updated every 6 April to use the ILG0 and ILG5 which applied on or, if necessary, the *business day* immediately before, the preceding 15 February; and

(7) (in the case of a future annuity with less than one year to maturity) be calculated using annuity rates that are no more favourable than the *firm's* relevant current immediate annuity rate or (if there is no such rate) the relevant immediate annuity rate available in the market; and

(8) be assumed to be payable monthly in advance with a guaranteed period of 5 years, unless it is unreasonable to do so.

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3.1A For any year commencing 6 April, the use of the male and female annual CMI Mortality Projections Models in the series CMI(20YY-2)_M_[1.25%] and CMI (20YY-2_F)_[1.25%], where YY-2 is the year of the Model used, will tend to show compliance with COBS 13 Annex 2 3.1 R (2).

R

3.3 A projection for an annuity with a *guaranteed annuity rate* must:

(1) show an additional projection of the income that could be provided where that *guaranteed annuity rate* provides higher rates of return than those otherwise shown; and

(2) calculate the income that could be provided on the basis of the rates in the *guaranteed annuity rate*, using a projection of the fund calculated using the *intermediate rate of return*.

G

3.4 When providing an additional projection for an annuity with a *guaranteed annuity rate*, a *firm* should:

(1) [deleted]

(2) take account of multiple *guaranteed annuity rates* on the fund or non-guaranteed elements of the fund on a proportionate basis; and

(3) provide an explanation of the key restrictions which may apply when the *guaranteed annuity rate* is taken up, particularly where these differ from the other projections shown.

R

3.2 A *projection* for a future annuity:

(1) must be calculated using lower rates of return , if the rates described in this section overstate the investment potential of the product;

(2) may be calculated using a lower rate of return if a *retail client* requests it.

4 [deleted]

R

5 Projections: accompanying statements and presentation

5.1 A *standardised deterministic projection* must be accompanied by:

(1) appropriate risk warnings, including warnings about volatility and the impact of inflation and that the product may pay back less than paid in (if that could be the case), and the degree to which any figures can be relied upon; and

(2) a statement:

(a) [deleted]

(b) that *charges* may vary;

(c) of the contributions that have been assumed;

(d) that increases in contributions have been assumed (if that is the case), together with sufficient information for a *retail client* to be able to understand the nature and magnitude of the assumed increases;

(e) of the sum of any actual *premiums* charged for any rider benefits or increased underwriting risks (where these have been charged);

(f) (for *personal pension schemes* and *stakeholder pension schemes*) of the assumptions used to calculate the regular income and that the *client* may choose when to take this income (if that is the case); and

(g) that the projection takes account of the existence of contractual obligations to provide a minimum rate (if that is the case).

[Note: article 185(5) of the *Solvency II Directive*]

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5.1A When presenting a *standardised deterministic projection* a *firm* must:

(1) include a short introductory explanation of what the *projection* seeks to illustrate;

(2) use a descriptive heading such as 'What your regular income might be worth in future or 'What might I get back from my plan?';

(3) place the *projection* and the associated explanation adjacent to each other on the same page; and

(4) explain that the *client* will be sent annual statements (if that is the case) which will allow them to keep track of their benefits.

R

Additional requirements: pension schemes and products linked to other products

5.2 A *standardised deterministic projection* for a product where the benefits illustrated depend on a link to a separate product must include an appropriate description of the material factors that might influence the returns available overall and any restrictions assumed in providing an illustration of benefits in relation to that separate product.

[Note: article 185(5) of the *Solvency II Directive*]

Charges information for a non-PRIIP packaged product

(except for a personal pension scheme and a stakeholder pension scheme where adviser charges or consultancy charges are to be facilitated by the product)

This annex belongs to ■ COBS 13.4.1 R (Contents of a key features illustration)

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Charges

1 Appropriate charges information

1.1 *Appropriate charges information* comprises:

(1) (a) a description of the nature and amount of the *charges* (including, where applicable, any retained interest *charges* under (4), below) a *client* will or may be expected to bear in relation to the product and, if applicable, any investments within the product; and

(b) if applicable, a description of the nature and amount of the *adviser charges* a *retail client* has agreed may be taken, including whether it is taken before or after investment into the product;

(2) an 'effect of charges' table;

(3) 'reduction in yield' information; and

(4) in relation to a *personal pension scheme*, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated) of the *charges*, if any, which a *personal pension scheme operator* or *pension scheme* trustee will receive as retained interest in relation to money held within the *personal pension scheme*.

1.2 Where a *firm* does not include a *projection* within its *key features illustration* the charges information can be on a generic basis.

1.2A The information described in 1.1(4) must be disclosed alongside information about any other *charges* the *client* will be expected to bear, and information about any interest that will be paid to *clients* on money held within a *personal pension scheme* bank account.

Exceptions

1.3 An effect of charges table and reduction in yield information are not required for:

(1) a *life policy* without a *surrender value*, but an appropriate warning must be included to make it clear that the *policy* has no cash-in value at any time;

(2) [deleted];

(3) [deleted]

(4) a *stakeholder product* or a product that will be held in a *CTF* where the relevant product and the *CTF* levy their *charges* annually, if the following is included instead:

"There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £250 throughout the year, this means we charge [£250 x y/100] that year. If your fund is valued at £500 throughout the year, this means we charge [£500 x y/100] that year. [After ten years these deductions reduce to [£250 x r/100] and [£500 x r/100] respectively.]"

where 'y' is the annual charge and 'r' is the reduced annual charge (if any); or

(5) a *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* where the *client* elects to withdraw their funds in full, reducing the value of their rights to zero.

1.3A Where 1.3(5) applies, if a *client* subsequently does not withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing their rights to zero, the *firm* must provide the *client* with an 'effect of charges' table and 'reduction in yield' information.

1.4 Reduction in yield information is not required for a without profits *life policy* with guaranteed benefits (except on surrender or variation), a *life policy* with a term not exceeding five years or a *life policy* that will be held in a *CTF*.

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2 Effect of charges table

2.1 Each 'effect of charges' table must be accompanied by, or refer to:

(1) a statement that all relevant guarantees have been taken into account (if there are any);

(2) [deleted]

(3) the rate of return (for *personal pension schemes* and *stakeholder pension schemes*, this must be net of price inflation, where appropriate) used to calculate the figures in the table; and

(4) an explanation of the purpose of the table and what the table shows.

2.2 The effect of charges table:

(1) for a *life policy* must be in the following form unless the firm chooses to adopt the form of the effect of charges table in ■ COBS 13 Annex 4 :

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Note 1A	Note 2	Note 3	Note 4	Note 5	Note 6
At end of year	**Total paid in to date**	**With-drawals**	**Total actual deductions to date**	**Effect of deductions to date**	**What you might get back**
	£	**£**	**£**	**£**	**£**
1					
...					
5					
10					
...					

(2) for any other *non-PRIIP packaged product* must be in the following form:

R

Note 1B	Note 2	Note 3	Note 5	Note 6
At end of year	**Investment to date**	**Income**	**Effect of deductions to date**	**What you might get back**
	£	**£**	**£**	**£**
1				
5				
10				
...				

(3) must be completed in accordance with the following notes:

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Note 1A

(a) This column must include the first five years, every subsequent fifth year and the final year of the *projection period*.

(b) Figures may be shown for every subsequent tenth year rather than subsequent fifth year where the *projection period* exceeds 25 years, or for whole of life policies.

	(c)	For whole of life policies, should the projected fund reach zero before the end of the *projection period* this must be highlighted.
	(d)	[deleted]
	(e)	If there is discontinuity in the trend of *surrender values*, the appropriate intervening years must also be included.
	(f)	Figures for a longer term may be shown.
Note 1B	(a)	This column must include the first year, the fifth year and every subsequent fifth year of the *projection period*.
	(b)	[deleted]
	(c)	Figures for a longer term may be shown.
Note 2	This column must show the cumulative contributions paid to the end of each relevant year.	
Note 3	This column must show the cumulative withdrawals taken or income paid to the end of each relevant year (if any). The column may be omitted if withdrawals or income are not anticipated or allowed.	
Note 4	This column is optional. If it is retained, it must show the total actual deductions to the end of each relevant year calculated using the following method:	
	(a)	apply the *intermediate rate of return* for the relevant product to the figure in the 'effect of deductions to date' column for the previous year;
	(b)	subtract this figure from the figure in the 'effect of deductions to date' column for the year being shown; and
	(c)	add the resulting figure to the figure in the 'total actual deductions to date' column for the previous year (if any).
Note 5	This column may be deleted if the product is a without profits *life policy* with benefits that are guaranteed except on surrender or variation, a *life policy* with a term not exceeding five years, or a *life policy* that will be held in a *CTF*.	
	If this column is not deleted, the 'effect of deductions to date' figure must be calculated by taking the accumulated value of the fund without reference to *charges* and then subtracting from this figure the figure in the 'what you might get back column' for the same year.	
Note 6	This column must show the *standardised deterministic projection* of the surrender value, cash-in value or transfer value, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return* to the end of each relevant year.	

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Exception

2.3 An effect of charges table and its title can be amended to the extent that it is necessary:

(1) to properly reflect the nature and effect of, for example, the *adviser charges*, *consultancy charges* or the charges inherent in a particular product; or

(2) to ensure that the column labels and any explanatory text reflect the product and whether inflation has been taken into account; or

(3) to ensure consistency with the terminology used in relation to a particular product.

G

2.4 [deleted]

R

3 Reduction in yield

3.1 Reduction in yield ('A') is 'B' less 'C' where:

(1) 'B' is the *intermediate rate of return* (for *personal pension schemes* and *stakeholder pension schemes*, net of price inflation, where appropriate) for the relevant product; and

(2) 'C' is determined by:

(a) carrying out a *standardised deterministic projection* to the *projection date*, using 'B'; and then

(b) calculating the annual rate of return ('C') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are left out of account.

3.2 A *firm* must present reduction in yield as 'A%', as part of statements which explain that:

(1) charges have the effect of reducing investment growth (after price inflation for personal pension schemes and stakeholder pension schemes) from 'B%' to 'C%', or in some other appropriate way; and

(2) the information about the reduction in investment growth can be used to compare the effect of charges with similar products.

3.3 If contributions will be invested in more than one fund in a single designated investment or made by an initial lump sum payment that is followed by regular contributions, the reduction in yield must be:

(1) calculated separately for each fund or for the single contribution and the regular contributions (as the case may be); and

(2) presented:

(a) on a fund by fund, or single contribution and regular contribution, basis, together with a statement which explains the nature and effect of a reduction in yield, the reason for the inclusion of more than one reduction in yield figure and the reason for the differences between them; or

(b) (if the reduction in yield results are so similar that one figure could reasonably be regarded as representative of the others), as a single figure together with a statement which explains the nature and effect of a reduction in yield, and that the reduction in yield figure given is representative of the reduction in yield figures for each of the funds or for the single and regular contributions (as the case may be); or

(c) through a single figure combining the separate figures for each fund or contribution in a proportionate manner, with an appropriate description.

3.4 Where a *firm* is calculating reduction in yield information, it must:

(1) disregard charges related to mortality and morbidity risks; or

(2) (where the requirement in (1) produces figures that are misleading) include a statement with the reduction in yield information that it has been calculated taking into account charges related to mortality and morbidity risk.

Charges information for a personal pension scheme and a stakeholder pension scheme

(where adviser charges or consultancy charges are facilitated by the product)

This annex belongs to ■ COBS 13.4.1 R (Contents of a key features illustration)

R

Charges

1 Appropriate charges information

1.1 *Appropriate charges information* comprises:

(1) (a) a description of the nature and amount of the *charges* (including, where applicable, any retained interest *charges* under (4), below) a *client* will or may be expected to bear in relation to the product and, if applicable, any investments within the product;

(b) if applicable, a description of the nature and amount of the *adviser charges* and *consultancy charges* a *retail client* or employer has agreed may be taken before investment into the product;

(c) if applicable, a description of the nature and amount of the *adviser charges* and *consultancy charges* a *retail client* or employer has agreed may be taken after investment into the product;

(2) an 'effect of charges' table;

(3) 'reduction in yield' information; and

(4) in relation to a *personal pension scheme*, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated) of the *charges*, if any, which a *personal pension scheme operator* or *pension scheme* trustee will receive as retained interest in relation to money held within the *personal pension scheme*.

Exceptions

1.2 An effect of charges table and reduction in yield information are not required for a *stakeholder pension scheme*, where *adviser charges* or *consultancy charges* are not being facilitated by the scheme, if the following is included instead:

"There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £500 throughout the year, this means we charge [£500 x y/100] that year. If your fund is valued at £7500 throughout the year, we will charge [£7500 x y/100] that year."

1.3 An effect of charges table and reduction in yield information are not required for a *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* where the *client* elects to withdraw their funds in full, reducing the value of their rights to zero.

1.3A Where 1.3 applies, if a *client* subsequently does not withdraw the funds in full from their *personal pension scheme*, *stakeholder pension scheme* or *drawdown pension* reducing their rights to zero, the *firm* must provide the *client* with an 'effect of charges' table and 'reduction in yield' information.

1.2A The information described in 1.1(4) must be disclosed alongside information about any other *charges* the *client* will be expected to bear, and information about any interest that will be paid to *clients* on money held within a *personal pension scheme* bank account.

R

2 Effect of charges table

2.1 Each effect of charges table must be accompanied by:

(1) an explanation of what the table shows;

(2) a statement that all relevant guarantees have been taken into account (if there are any); and

(3) [deleted]

(4) the rate of return (after price inflation, where appropriate)used to calculate the figures in the table.

2.2 An effect of charges table must be in the following form:

Note 1	Note 2	Note 3	Note 4	Note 5	Note 6
At end of year	The payments into your plan	Withdrawals	Before charges are taken	If only plan and investment charges are taken	After all charges are taken from this plan
	£	£	£	£	£
1					
...					
5					
At age [xx]					

Note 1 This column must include at least the first, third and fifth year and the intended date of retirement.

For a *drawdown pension* or *uncrystallised funds pension lump sum* payments, figures must be included for each of the first ten years, or less if the value of the fund is projected at the *intermediate rate of return* to reach zero before then.

Note 2 This column must show the cumulative contributions paid to the end of each relevant year.

Note 3 This column must show the cumulative withdrawals intended to be taken to the end of each relevant year. The column may be omitted if withdrawals are not anticipated or allowed.

Note 4 This column must show a *standardised deterministic projection* of the benefits, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return*, to the end of each relevant year, but without taking any *charges* into account.

Note 5 This column must show a *standardised deterministic projection* of the benefits, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return* to the end of each relevant year, but taking into account only the *charges* described in COBS 13 Annex 4 R paragraph 1.1(1)(a).

Note 6 This column must show a *standardised deterministic projection* of the benefits, calculated in accordance with the *rules* in COBS 13 Annex 2 (Projections) at the appropriate *intermediate rate of return* to the end of each relevant year taking into account all charges described in COBS 13 Annex 4 R paragraph 1.1(1)(a) and (c).

Where both *adviser charges* and *consultancy charges* are being facilitated from a product this column should show the combined effect of those charges.

This column may be omitted if there are no *adviser charges* or *consultancy charges*.

R

Exception

2.3 An effect of charges table and its title can be amended, to the extent that it is necessary:

(1) to properly reflect the nature and effect of, for example, the adviser charges, consultancy charges or the charges inherent in a particular product; or

(2) to ensure that the column labels and any explanatory text reflect the nature of the product and to make it clear whether price inflation has been taken into account; or

(3) to ensure consistency with the terminology used in relation to a particular product.

G

2.4 [deleted]

2.5 An effect of charges table must be appropriately titled, for example, 'How the charges reduce the value of your pension fund'.

R

3 Reduction in yield

3.1 Product reduction in yield ('A') is 'B' less 'C' where:

(1) 'B' is the *intermediate rate of return* (net of price inflation, where appropriate) for the relevant product; and

(2) 'C' is determined by:

(a) carrying out a *standardised deterministic projection* to the *projection date*, but without taking any *adviser charges* or *consultancy charges* into account, using 'B'; and then

(b) calculating the annual rate of return ('C') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are excluded.

3.2 Total reduction in yield ('D') is 'B' less 'E' where:

(1) 'B' is the *intermediate rate of return* (net of price inflation, where appropriate) for the relevant product; and

(2) 'E' is determined by:

(a) carrying out a *standardised deterministic projection* to the *projection date* taking all *charges* into account, using 'B'; and then

(b) calculating the annual rate of return ('E') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are excluded.

3.3 (1) A *firm* must present the product reduction in yield as 'A%', as part of statements which explain that:

(a) 'product charges reduce investment growth after price inflation from 'B%' to 'C%'', or in some other appropriate way; and

(b) the information about the reduction in investment growth can be used to compare the effect of charges with similar products.

(2) If *adviser charges* or *consultancy charges*, or both *adviser charges* and *consultancy charges* are to be facilitated by the product, a *firm* must also present the reduction in yield as 'D%', as part of a statement which explains that 'all charges reduce the investment growth (after price inflation, where appropriate) from 'B%' to 'E'%", or in some other appropriate way and explain the difference between the two reduction in yield figures.

3.4 If contributions will be invested in more than one fund in a single designated investment or made by an initial lump sum payment that is followed by regular contributions, the reduction in yield must be:

(1) calculated separately for each fund or for the single contribution and the regular contributions, as applicable; and

(2) presented:

(a) on a fund-by-fund, or single contribution and regular contribution, basis, together with a statement which explains the nature and effect of a reduction in yield, the reason for the inclusion of more than one reduction in yield figure and the reason for the differences between them; or

(b) (if the reduction in yield results are so similar that one figure could reasonably be regarded as representative of the others) as a single figure together with a statement which explains the nature and effect of a reduction in yield, and that the reduction in yield figure given is representative of the reduction in yield figures for each of the funds or for the single and regular contributions, as applicable; or

(c) through a single figure combining the separate figures for each fund or contribution in a proportionate manner, with an appropriate description.

Chapter 14

Providing product information to clients

14.1 Interpretation

14.1.1 R In this chapter:

(1) '*retail client*' includes the trustee or *operator* of a *stakeholder pension scheme* or *personal pension scheme* and the trustee of a *money-purchase occupational pension scheme*; and

(2) (except in relation to the requirements under the *PRIIPs Regulation*) 'sell' includes '*sell*, *personally recommend* or *arrange* the sale of' in relation to a *designated investment* and equivalent activities in relation to a *cash-deposit ISA*, *cash-only lifetime ISA* and *cash-deposit CTF*.

14.2 Providing product information to clients

Providing information about PRIIPs

14.2.-1 G

(1) The *PRIIPs Regulation* requires a *person* who advises on, or sells, a *PRIIP* to provide a retail investor (as defined in the *PRIIPs Regulation*) in the *United Kingdom* with the *key information document* for that *PRIIP*.

[**Note:** article 13 of the *PRIIPs Regulation*]

(2) Since the *PRIIPs Regulation* imposes requirements in relation to the provision of information about *PRIIPs*, this chapter does not apply to a *firm* when it is advising on, or selling, a *PRIIP* (except where applicable to *Solvency II Directive information*).

(3) A *firm* that sells a *life policy* that is also a *PRIIP* must provide the information required by ■ COBS 14.2.1R(2). Some or all of this information may be included in a *key information document* if this is required to be provided by, and such inclusion is permitted under, the *PRIIPs Regulation*.

The provision rules for products other than PRIIPs

14.2.1 R

A *firm* that sells, or (where relevant) gives effect to:

(1) a *non-PRIIP packaged product* to a *retail client*, must provide a *key features document* and a *key features illustration* to that *client* (unless the *packaged product* is a *unit* in a *regulated collective investment scheme*);

(2) a *life policy* to a *client*, must provide:

(a) the *Solvency II Directive information* to that *client*;

(b) a *client* with objective and relevant information about the *policy*:

in a comprehensible form to allow the *client* to make an informed decision;

modulated in a way that takes into account the complexity of the *policy* and the type of *client*;

whether or not the *firm* makes a *personal recommendation*; and

irrespective of whether the *policy* is offered as part of a package pursuant to ■ COBS 6.1ZA.16AR to ■ COBS 6.1ZA.16ER;

(c) the information in (b) must be provided prior to the conclusion of the *life policy* and in accordance with ■ COBS 7.4, rather than in accordance with the other *rules* in this section;

(3) the variation of a *life policy* or *personal pension scheme* to a *retail client*, must provide that *client* with sufficient information about the variation for the *client* to be able to understand the consequences of the variation;

(3A) [deleted]

(3B) a *retail client's* request to make *income withdrawals* from their *personal pension scheme* or *stakeholder pension scheme* for the first time must provide that *retail client* with:

(a) a *key features illustration*; and

(b) such other information as is necessary for the *client* to understand the consequences of the request;

(3C) a *retail client's* request to make one-off or regular *uncrystallised funds pension lump sum* payments from their *personal pension scheme* or *stakeholder pension scheme* for the first time must provide that *client* with:

(a) a *key features illustration*; and

(b) such other information as is necessary for the *client* to understand the consequences of the request;

a *retail client's* request to designate *personal pension scheme* or *stakeholder pension scheme* funds to enable the *retail client* to make *income withdrawals* must provide that *client* with:

(a) a *key features illustration*; and

(b) such other information as is necessary for the *retail client* to understand the consequences of the request;

(3E) a *retail client's* request to make an *income withdrawal* subsequent to (3B) or *uncrystallised funds pension lump sum* payment subsequent to (3C) must provide:

(a) such information as is necessary for the *client* to understand the consequences of the request; and

(b) where relevant, the information required by ■ COBS 13 Annex 2.2.9R (Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum* payments);

(3E) a *retail client's* request for a *short-term annuity* must provide:

(a) a *key features illustration*; and

(b) such other information as is necessary for the *client* to understand the consequences of the request;

(4) a *cash-deposit ISA*, *cash-only lifetime ISA* or *cash-deposit CTF* to a *retail client*, must provide a *key features document* to that *client*;

(4A) a *lifetime ISA*, which is not a *cash-only lifetime ISA*, to a *retail client* must provide to that *client* the information in ■ COBS 14 Annex 1;

(5) [deleted]

(5A) a *unit* in a *KII-compliant NURS* must provide the following to a *retail client*:

(a) a copy of the *scheme's NURS-KII document* and (unless already provided) the information required by ■ COBS 13.3.1R(2) (General requirements); and

(b) if that *client* is present in the *United Kingdom*, enough information for the *client* to be able to make an informed decision about whether to hold the *units* in a *wrapper* (if the *units* will, or may, be held in that way);

(6) [deleted]

(7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which is a *recognised scheme*, to a *client*, must:

(a) provide a copy of the *scheme's key investor information document* or, as the case may be, *EEA key investor information document* to that *client*; and

(b) where the *client* is a *retail client*, provide separately (unless already provided) the information required by ■ COBS 13.3.1R (2) (General requirements) and, if that *client* is present in the *United Kingdom*, the information required by (5A)(b).

(8) [deleted]

[**Note**: in respect of (2) article 185(1) of the *Solvency II Directive* and in respect of (2)(b) articles 20(1) first paragraph, 20(2), 20(4) and 23 of the *IDD*]

[**Note**: in respect of (7), articles 1 and 80 of the *UCITS Directive*]

14.2.1-A G If a *retail client* is invested in a *pathway investment* and makes a request falling within ■ COBS 14.2.1R(3B) or ■ (3E), but which is clearly incompatible with the *investment pathway* option selected by the client under ■ COBS 19.10.17R(1), this should be brought to the client's attention.

Provision of key investor information document or NURS-KII document

14.2.1A R (1) This *rule* applies to:

(a) an *authorised fund manager* of a *UCITS scheme* or a *KII-compliant NURS* that is either an *authorised unit trust*, *authorised contractual scheme* or an *ICVC*; and

(b) an *ICVC* that is a *UCITS scheme* or *KII-compliant NURS*.

(2) An *authorised fund manager* and an *ICVC* in (1) that sells *units* in a *UCITS scheme* or a *KII-compliant NURS* directly, or through another natural or legal *person* who acts on its behalf and under its full and unconditional responsibility, must ensure that investors are provided with the *key investor information document* for the *UCITS scheme* or the *NURS-KII document* for the *KII-compliant NURS*.

(3) An *authorised fund manager* and an *ICVC* in (1) that does not sell *units* in a *UCITS scheme* or a *KII-compliant NURS* directly, or through another natural or legal *person* who acts on its behalf and under its full and unconditional responsibility, must ensure that the *key investor information document* for the *UCITS scheme* or the *NURS-KII document* for the *KII-compliant NURS* is provided on request to product manufacturers and intermediaries selling, or advising

investors on, potential *investments* in those *UCITS schemes* or *KII-compliant NURS* or in products offering exposure to them.

(4) The *key investor information document* or the *NURS-KII document* must be provided to investors free of charge.

(5) An *authorised fund manager* and an *ICVC* in (1) may, instead of providing the *key investor information document* or *NURS-KII document* to investors in paper copy in accordance with (2), provide it in a *durable medium* other than paper or by means of a website that meets the *website conditions*, in which case the *authorised fund manager* and *ICVC* must:

(a) deliver a paper copy of the *key investor information document* or *NURS-KII document* to the investor on request and free of charge; and

(b) make available an up-to-date version of the *key investor information document* or *NURS-KII document* to investors on the website of the *ICVC* or *authorised fund manager*.

[**Note:** articles 80 and 81 of the *UCITS Directive*]

Provision of a generic key features illustration

14.2.1B R When the *rules* in this chapter require the offer or provision of a *key features illustration*, a *firm* may provide a *generic key features illustration* if that *generic key features illustration* has been prepared in accordance with ■ COBS 13.4.2 R.

Provision of information: other requirements

14.2.1C R A *firm* that arranges to facilitate the payment of an *adviser charge* or *consultancy charge*, or an increase in such a charge from an in-force *packaged product*, must provide to the *retail client* sufficient information for the *retail client* to be able to understand the likely effect of that facilitation.

14.2.1D G Where a *firm* arranges to facilitate the payment of an *adviser charge* or *consultancy charge* for a new *non-PRIIP packaged product*, the information required by ■ COBS 14.2.1CR should be included in the *key features illustration*.

14.2.2 R The *documents* or information required to be provided or offered by ■ COBS 14.2.1 R and ■ COBS 14.2.1C R must be in a *durable medium* or made available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

14.2.3 R

(1) A *firm* that *personally recommends* that a *retail client* holds a particular asset in a *SIPP* must provide that *client* with sufficient information for the *client* to be able to make an informed decision about whether to buy or invest.

(2) This *rule* does not apply if the asset is described in ■ COBS 14.2.1 R.

Firm not to cause confusion about the identity of the producer of a product

14.2.4 R When a *firm* provides a *document* or information in accordance with the *rules* in this section, it must not do anything that might reasonably cause a *retail client* to be mistaken about the identity of the *firm* that has produced, or will produce, the product.

Exception to the provision rules: key features documents and key investor information documents

14.2.5 R A *firm* is not required to provide:

(1) a *document*, if the *firm* produces the product and the *rules* in this section require another *firm* to provide the document;

(2) [deleted]

(3) [deleted]

(4) [deleted]

[**Note**: in respect of (3), article 185(8) of the *Solvency II Directive*]

Exception: key features illustrations

14.2.6 R A *firm* is not required to provide a *key features illustration* for a product if the information that would have been included in that illustration is included in the *key features document* provided to the *client*.

14.2.6A R A *firm* is not required to provide a *key features illustration* in relation to a *pension annuity* if the *firm* provides the information required by ■ COBS 19.9 (Pension annuity comparison information).

Exception to the provision rules: key features documents and key features illustrations

14.2.7 R A *firm* is not required to provide a *key features document* or a *key features illustration* for:

(1) [deleted]

(2) a *life policy* if:

(a) [deleted]

(b) the *client* is habitually resident outside the *United Kingdom* and the sale is not by *distance contract*.

(3) a *traded life policy*; or

(4) an interest in an *investment trust savings scheme*.

[**Note**: in respect of (2), articles 4(1) and 16 of the *Distance Marketing Directive* and article 185 of the *Solvency II Directive*]

Exception to the provision rules: key features documents and key features illustrations

14.2.8 R A *firm* is not required to provide a *key features document* or a *key features illustration*, if:

(1) the *client* is buying or investing in response to a *direct offer financial promotion* without receiving a *personal recommendation* to buy or invest; and

(2) the *firm* provides materially the same information in some other way.

Exception to the provision rules: key features documents, key features illustrations, key investor information documents and NURS-KII documents

14.2.9 R A *firm* is not required to provide a *key features document* or a *key features illustration* if:

(1) the *client* is habitually resident outside the *United Kingdom* and not present in the *United Kingdom* when the relevant application is signed; or

(2) the purchase is by a *discretionary investment manager* on behalf of a *retail client*; or

(3) the sale is *arranged* or *personally recommended* by an *investment manager* and the *client* has agreed that a *key features document* is not required.

(4) [deleted]

14.2.9A R For the purposes of the provision rules in relation to a *key investor information document* or a *NURS-KII document*, a *firm*:

(1) may satisfy the requirement to provide the document to the investor by providing it to a *person* who has written authority to make investment decisions on that investor's behalf; and

(2) is not required to consider as a new transaction:

(a) a subscription to *units* in a *UCITS scheme*, an *EEA UCITS scheme* or a *KII-compliant NURS* in which the *client* already holds *units*; or

(b) a series of connected transactions undertaken as the consequence of a single investment decision; or

(c) a decision by the *client* to switch from one class of *units* to another in the same *scheme*;

if an up-to-date version of the *key investor information document* or *NURS-KII document* for the *scheme* or the relevant class of *units* has already been provided to that *client*.

[**Note:** article 80 of the *UCITS Directive*]

14.2.10 G (1) [deleted]

(2) The *FCA* would regard a decision to subscribe to a regular monthly savings plan as a single investment decision for the purpose of

COBS 14.2.9AR (2)(a). However, a subsequent decision by the *client* to increase the amount of the regular contributions to be invested in *units* of a particular *scheme* or to direct the contributions to a different *scheme*, would in each case constitute a new transaction.

14.2.11 R [deleted]

Exception: successive operations

14.2.12 R In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

14.2.13 R If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the *rules* in this section only apply:

(1) when the first operation is performed; and

(2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

The timing rules

14.2.14 R When the *rules* in this section require a *firm* to:

(1) [deleted]

(2) provide a *key features document* or any other *document* or information to a *client*, the *document* or information must be provided free of charge and in good time before the *firm* carries on the relevant business; or

(3) provide a *key investor information document*, *EEA key investor information document* or *NURS-KII document* to a *client*, it must be provided in good time before the *client's* proposed subscription for *units* in the *scheme*.

[**Note**: article 80 of the *UCITS Directive*]

Exception to the timing rules: child trust funds

14.2.15 R A *key features document* for an *HMRC allocated CTF* must be provided as soon as reasonably possible after the *CTF* has been opened.

Exception to the timing rules: distance contracts and voice telephony communications

14.2.16 R (1) A *firm* may provide a *document*, or the information required to be provided by the *rules* in this section, in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *client's* request using a means of distance communication that does not enable the *document* or

information to be provided in that form in good time before the *client* is bound by the contract.

(2) The exception in (1) does not apply in relation to the provision of an *EEA key investor information document*, a *key investor information document* or a *NURS-KII document* required to be provided under ■ COBS 14.2.1 R and ■ COBS 14.2.1A R.

14.2.17 R

(1) Where the *rules* in this section require a *document* or information to be provided, in the case of a voice telephony communication, a *firm* must:

(a) if the *client* gives explicit consent to receiving only limited information, provide the abbreviated distance marketing disclosure information () orally to the *client*;

(b) if the *client* does not give explicit consent to only receiving limited information, and the parties wish to proceed by voice telephony communication, provide the distance marketing information () orally to the *client*;

(c) in the case of (a) or (b), send the *documents* or information to the *client* in a *durable medium* immediately after the contract is concluded.

(2) The exception in (1) does not apply in relation to the provision of an *EEA key investor information document*, a *key investor information document* or a *NURS-KII document* required to be provided under ■ COBS 14.2.1 R and ■ COBS 14.2.1A R.

Providing additional information to the client

14.2.18 G

(1) A *firm* that provides the product information required by this section is not precluded from providing additional information to the *client* (for example, in order to assist the *client's* understanding of the proposed transaction).

(2) When a *firm* provides additional information it should:

(a) ensure that the additional information does not disguise, diminish or obscure important information contained in the product information required by this section;

(b) consider whether any other *rules* or requirements in any *EU*-derived regulations apply to the communication of that additional information. For example, for marketing communications relating to a *UCITS scheme* see ■ COBS 4.13.2 R; and

(c) have regard to the *fair, clear and not misleading rule*, the *client's best interests rule* and *Principles* 6 and 7.

14.3 Information about designated investments (non-MiFID provisions)

Application

14.3.1 R This section applies to a *firm* in relation to:

(1) [deleted]

(2) any of the following *regulated activities* when carried on for a *retail client*:

(a) making a *personal recommendation* about a *designated investment*; or

(b) *managing investments* that are *designated investments* (other than a *P2P agreement*); or

(c) *arranging* (bringing about) or *executing* a *deal* in a *warrant*, *non-readily realisable security speculative illiquid security*, or *derivative*; or

(d) engaging in *stock lending activity*; or

(e) *operating an electronic system in relation to lending*, but only in relation to facilitating a person becoming a lender under a *P2P agreement*.

except to the extent that the carrying on of such a *regulated activity* constitutes *MiFID, equivalent third country or optional exemption business*.

(3) Where a *rule* in this chapter applies to a *firm* which is *arranging* (bringing about) or *executing* a *deal* in a *speculative illiquid security*, the *rule* also applies to:

(a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of ■ GEN 2.2.26R); and

(b) a Gibraltar-based firm (having the same meaning as in the *Gibraltar Order*) to the extent that the *rule* does not already apply to such a Gibraltar-based firm as a result of ■ GEN 2.3.1R).

14.3.1A G A *firm* carrying on *MiFID, equivalent third country or optional exemption business* should consider whether the requirements in articles 46 and 48 of the *MiFID Org Regulation* apply; see ■ COBS 14.3A (Information about financial instruments (MiFID provisions)).

Providing a description of the nature and risks of designated investments

14.3.2 R A *firm* must provide a *client* with a general description of the nature and risks of *designated investments*, taking into account, in particular, the *client's* categorisation as a *retail client* or a *professional client*. That description must:

(1) explain the nature of the specific type of *designated investment* concerned, as well as the risks particular to that specific type of *designated investment*, in sufficient detail to enable the *client* to take investment decisions on an informed basis; and

(2) include, where relevant to the specific type of *designated investment* concerned and the status and level of knowledge of the *client*, the following elements:

(a) the risks associated with that type of *designated investment* including an explanation of leverage and its effects and the risk of losing the entire investment;

(b) the volatility of the price of *designated investments* and any limitations on the available market for such investments;

(c) the fact that an investor might assume, as a result of transactions in such *designated investments*, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the *designated investments*; and

(d) any margin requirements or similar obligations, applicable to *designated investments* of that type.

14.3.3 R If a *firm* provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the *Prospectus Regulation*, that *firm* must inform the *retail client* where that prospectus is made available to the public.

14.3.4 R Where the risks associated with a *designated investment* composed of two or more different *designated investments* or services are likely to be greater than the risks associated with any of the components, a *firm* must provide an adequate description of the components of that *designated investment* and the way in which its interaction increases the risks.

14.3.5 R In the case of a *designated investment* that incorporates a guarantee by a third party, the information about the guarantee must include sufficient detail about the guarantor and the guarantee to enable the *retail client* to make a fair assessment of the guarantee.

Satisfying the provision rules

14.3.6 G [deleted]

14.3.7 G Providing a *key features document*, *key investor information document*, *EEA key investor information document* or *NURS-KII document* may satisfy the requirements of the *rules* in this section.

Firms advising on P2P agreements

14.3.7A G Examples of information a *firm advising on P2P agreements or P2P portfolios* should provide to explain the specific nature and risks of a *P2P agreement* or a *P2P portfolio* include:

(1) expected and actual default rates in line with the requirements in ■ COBS 4.6 on past and future performance;

(2) a summary of the assumptions used in determining expected future default rates;

(3) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the *operator of the electronic system in relation to lending* considers the borrower eligible for a *P2P agreement*;

(4) where lenders have the choice to invest in specific *P2P agreements*, details of the creditworthiness assessment of the borrower carried out;

(5) whether the *P2P agreement* benefits from any security and if so, what;

(6) a fair description of the likely actual return, taking into account fees, default rates and taxation;

(7) an explanation of how any tax liability for lenders arising from investment in *P2P agreements* would be calculated;

(8) an explanation of the *operator of the electronic system in relation to lending's* procedure for dealing with a loan in late payment or default;

(9) the procedure for a lender to access their money before the term of the *P2P agreement* has expired; and

(10) an explanation of what would happen if the *operator of the electronic system in relation to lending* fails, including confirmation that there is no recourse to the Financial Services Compensation Scheme.

14.3.7B G When complying with the information requirements set out in this chapter and other parts of the *FCA Handbook*, *firms* advising on a *P2P agreement* or a *P2P portfolio* may also wish to consider providing to *retail clients* any other information that an *operator of an electronic system in relation to lending* must disclose in accordance with ■ COBS 18.12.

14.3.7C G *Firms* providing information to *clients*, and communicating information, about an *innovative finance ISA* should also have regard to the *guidance* in ■ COBS 4.5.9G.

Product information: form

14.3.8 R The *documents* and information provided in accordance with the *rules* in this section must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

The timing rules

14.3.9 R

(1) The information to be provided in accordance with the *rules* in this section must be provided in good time before a *firm* carries on *designated investment business* with or for a *retail client*.

(2) A *firm* may provide that information immediately after it begins to carry on that business if:

(a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from complying with that *rule*; and

(b) in any case where the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* as if the *client* was a *consumer*.

Keeping the client up-to-date

14.3.10 R

A *firm* must notify a *client* in good time about any material change to the information provided under the *rules* in this section which is relevant to a service that the *firm* is providing to that *client*. That notification must be given in a *durable medium* if the information to which it relates is given in a *durable medium*.

Information about UCITS schemes

14.3.11 R

If a *firm* provides a *client* with a *key investor information document* or *EEA key investor information document* that meets all of the requirements applying in relation to that *document*, it will have provided appropriate information for the purpose of the requirement to disclose information on:

(1) *designated investments* and investment strategies (■ COBS 2.2.1R (1)(b)); and

(2) costs and associated charges (■ COBS 2.2.1R (1)(d) and ■ COBS 6.1.9 R;

in relation to the costs and associated charges in respect of the *UCITS scheme* itself, including the exit and entry commissions.

Information about KII-compliant NURS

14.3.11A R

If a *firm* provides a *client* with a *NURS-KII document* it will have provided appropriate information for the requirement to disclose information on:

(1) *designated investments* and investment strategies (■ COBS 2.2.1R(1)(b)); and

(2) costs and associated charges (■ COBS 2.2.1R(1)(d) and ■ COBS 6.1.9R);

in relation to the costs and associated charges for the *KII-compliant NURS* itself, including the exit and entry commissions.

Distributor disclosure requirements for UCITS or KII-compliant NURS

14.3.12 G

A *key investor information document* and *EEA key investor information document* or a *NURS-KII document* provide sufficient information in relation to the costs and associated charges in respect of the *UCITS* or *KII-compliant NURS* itself. However, a *firm* distributing *units* in a *UCITS* or *KII-compliant NURS* should also inform a *client* about all of the other costs and associated charges related to the provision of its services in relation to *units* in the *UCITS* or *KII-compliant NURS*.

14.3A Information about financial instruments (MiFID provisions)

Application

14.3A.1 R This section applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.

Effect of provisions marked "UK" for third country investment firms and MiFID optional exemption firms

14.3A.2 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).

14.3A.2A 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*.

Providing a description of the nature and risks of financial instruments

14.3A.3 R A *firm* must provide a *client* with:

(1) appropriate guidance on, and warnings of, the risks associated with investments in *financial instruments* or in respect of particular investment strategies;

(2) information on whether a particular *financial instrument* is intended for *retail* or *professional clients*, taking account of the identified target market in accordance with the *rules* in ■ PROD 3; and

(3) the information required by this section in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* that is being offered and, consequently, to take investment decisions on an informed basis. That information may be provided in a standardised format.

[**Note:** article 24(4)(b) and article 24(5) of *MiFID*]

14.3A.4 G ■ COBS 14.3A.3R supplements ■ COBS 2.2A.2R (Information disclosure before providing services (MiFID provisions)).

14.3A.5 UK

48(1)Investment firms shall provide clients or potential clients in good time before the provision of investment services or ancillary services to clients or potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation as either a retail client, professional client or eligible counterparty. That description shall explain the nature of the specific type of instrument concerned, the functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.

48(2)The description of risks referred to in paragraph 1 shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements:

(a)the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment including the risks associated with insolvency of the issuer or related events, such as bail in;

(b)the volatility of the price of such instruments and any limitations on the available market for such instruments;

(c)information on impediments or restrictions for disinvestment, for example as may be the case for illiquid financial instruments or financial instruments with a fixed investment term, including an illustration of the possible exit methods and consequences of any exit, possible constraints and the estimated time frame for the sale of the financial instrument before recovering the initial costs of the transaction in that type of financial instruments;

(d)the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments;

(e)any margin requirements or similar obligations, applicable to instruments of that type.

48(3)Where an investment firm provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the law of the United Kingdom which was relied on immediately before IP completion day to implement Directive 2003/71/EC, as that law is amended from time to time, that firm shall in good time before the provision of investment services or ancillary services to clients or potential clients inform the client or potential client where that prospectus is made available to the public.

48(4)Where a financial instrument is composed of two or more different financial instruments or services, the investment firm shall provide an adequate description of the legal nature of the financial instrument, the components of that instrument and the way in which the interaction between the components affects the risks of the investment.

48(5)In the case of financial instruments that incorporate a guarantee or capital protection, the investment firm shall provide a client or a potential client with information about the scope and nature of such guarantee or capital protection. When the guarantee is provided by a third party, information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the client or potential client to make a fair assessment of the guarantee.

[**Note:** article 48 of the *MiFID Org Regulation*]

Satisfying the provision rules

14.3A.6 G

(1) Where a *firm* is required to provide information to a *client* before the provision of a service, each transaction in respect of the same type of *financial instrument* should not be considered as the provision of a new or different service.

[Note: recital 69 to the MiFID Org Regulation]

(2) But a *firm* should ensure that the *client* has received all relevant information in relation to a transaction which subsequently takes place, such as details of product charges that differ from those disclosed in respect of the prior transaction or transactions.

Timing of disclosure

14.3A.7 UK

46(2)Subject to paragraph 2A, investment firms must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

46(2A)Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion:

(a)the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and

(b)subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:

(i)electronic format; or

(ii)where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.

46(2B)The conditions referred to in paragraph 2A(b) are:

(a)the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and

(b)the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.

Note: article 46(2), (2A) and (2B) of the *MiFID Org Regulation*]

14.3A.8 G

The provisions in *COBS* that reproduce the information requirements contained in articles 47 to 50 of the *MiFID Org Regulation* are:
■ COBS 6.1ZA.5UK, ■ COBS 6.1ZA.8UK, ■ COBS 6.1ZA.9UK, ■ COBS 6.1ZA.14UK and ■ COBS 14.3A.5UK.

Medium of disclosure

14.3A.9 UK

46(3)The information referred to in paragraphs 1 to 2B shall be provided in a durable medium or by means of a website (where it does not constitute a

durable medium) provided that the conditions specified in Article 3(2) are satisfied.

[**Note:** article 46(3) of the *MiFID Org Regulation*]

Keeping the client up-to-date

14.3A.10 UK

46(4)Investment firms shall notify a client in good time about any material change to the information provided under Articles 47 to 50 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

[**Note:** article 46(4) of the *MiFID Org Regulation*]

Information provided in relation to units in collective investment undertakings or PRIIPs

14.3A.11 UK

51Investment firms distributing units in collective investment undertakings or PRIIPs shall additionally inform their clients about any other costs and associated charges related to the product which may have not been included in the UCITS KID or PRIIPs KID and about the costs and charges relating to their provision of investment services in relation to that financial instrument.

[**Note:** article 51 of the *MiFID Org Regulation*]

14.4 Provision of information by an intermediate Unitholder

14.4.1	R	[not used]
14.4.2	R	[not used]
14.4.3	R	[not used]
14.4.4	R	[not used]
14.4.5	R	[not used]
14.4.6	R	[not used]
14.4.7	R	[not used]
14.4.8	R	[not used]
14.4.9	R	[not used]

Information requests by authorised fund managers for liquidity management purposes

14.4.10 R If an *intermediate Unitholder* receives a reasonable request from an *authorised fund manager* for information relating to the beneficial owners of the *units* of a *scheme* that it operates which the *authorised fund manager* reasonably needs for the purposes of liquidity management, the *intermediate Unitholder* must provide that information to the *authorised fund manager* as soon as is reasonably practicable.

14.4.11 G Examples of information which may be reasonably requested by an *authorised fund manager* include:

(1) a breakdown of the total number of *units* held by the *intermediate Unitholder* in each *scheme* to indicate the number of *units* attributable to individual beneficial owners; and

(2) information about the types of distribution channel which have been used to sell the *units* to the relevant beneficial owners.

14.4.12 G In determining whether a request from an *authorised fund manager* is reasonable, an *intermediate Unitholder* may take into account the frequency with which such requests have been received from that *authorised fund manager*.

Lifetime ISA information

This Annex belongs to COBS 13.3.1R(3) and COBS 14.2.1R(4A).

Information which comprises the following:

1 Features of a lifetime ISA

1.1 R An explanation to the *retail client* of the key features of a *lifetime ISA*, including:

(1) eligibility criteria to open and subscribe to a *lifetime ISA*;

(2) annual *lifetime ISA* subscription limits;

(3) tax treatment of qualifying investments held in a *lifetime ISA*;

(4) process for transferring a *lifetime ISA*;

(5) eligibility for the *lifetime ISA government bonus*; and

(6) the *lifetime ISA government withdrawal charge* and the circumstances in which this might be incurred.

1.2 R The explanation in COBS 14 Annex 1 1.1R(6) should include a warning that:

(1) the *lifetime ISA government withdrawal charge* recovers any *lifetime ISA government bonus* and any investment growth on that bonus plus an additional amount; and

(2) if the *lifetime ISA government withdrawal charge* is incurred, the *retail client* could receive back less than they paid in.

2 Additional factors for a retail client to consider when deciding whether to invest in a lifetime ISA

2.1 R An explanation to the *retail client* of:

(1) the different savings objectives for which the *lifetime ISA* is intended, being house purchase and/or saving for retirement, either in the alternative or in combination; and

(2) the types of qualifying investments which can be held in the *lifetime ISA* being sold by the *firm*.

2.2 R A warning that if a *retail client* saves in a *lifetime ISA* instead of enrolling in, or contributing to, a *qualifying scheme*, *occupational pension scheme* or *personal pension scheme*:

(1) the *retail client* may lose the benefit of contributions by an employer (if any) to that scheme; and

(2) the *retail client's* current and future entitlement to means tested benefits (if any) may be affected.

2.3 G The explanation in COBS 14 Annex 1 2.1R should:

(1) encourage a *retail client* to consider their *lifetime ISA* subscription level and choice of qualifying investment in relation to their savings objectives, their expected investment horizon and their financial circumstances as a whole, including other provision for retirement; and

(2) inform the *retail client* that the factors in (1) may change over time and that the *retail client* should regularly review their *lifetime ISA* subscription and/or qualifying investments.

3 Example outcome of retirement saving by a retail client in a lifetime ISA

3.1 R A descriptive heading such as 'What a lifetime ISA might be worth at age 60?'

3.2 R A completed version of the table in COBS 14 Annex 1 3.5R.

3.3 R An explanation, positioned adjacent to this table on the same page, stating that:

(1) the table is designed to:

(a) help the *retail client* understand what the value of a *lifetime ISA* might be at age 60, depending on the age at which saving starts and assuming the maximum annual subscription at the beginning of each tax year up to age 50 and receipt of the *lifetime ISA government bonus*; and

(b) provide information for a *retail client* who is saving for retirement in a *lifetime ISA* and so may not be relevant to a *retail client* whose saving objective for a *lifetime ISA* is house purchase; and

(2) the estimated outcomes in Columns 4 and 5:

(a) are based on standardised rates of return which may not reflect:

(i) actual or expected returns; or

(ii) the *retail client's* choice of qualifying investment for a *lifetime ISA* (accompanied by an indication of how the *retail client* can access information relating to the qualifying investments which the *retail client* may purchase from the *firm*); and

(b) include the effect of *lifetime ISA charges* and inflation on estimated outcomes from a *lifetime ISA*; and

(3) Column 6 shows the effect of *lifetime ISA charges* and inflation on the returns from a *lifetime ISA* which the *retail client* can use to compare the *lifetime ISA charges* applicable to other *lifetime ISAs* and charges applicable to longer-term savings products.

3.4 R The explanations in COBS 14 Annex 1 3.3R(2) and COBS 14 Annex 1 3.3R(3) must include a statement that *lifetime ISA charges* taken into account in the table:

(1) may vary over time; and

(2) exclude any fee or charge:

(a) payable by or on behalf of a *retail client* to a *firm* in relation to the provision of a *personal recommendation* by the *firm* in respect of the *lifetime ISA*; and

(b) relating to the qualifying investments held in the *lifetime ISA* (including in relation to the provision of a *personal recommendation* in respect of those investments).

3.5 R This table belongs to COBS 14 Annex 1 3.2R.

1	2	3	4	5	6
Age saving in a lifetime ISA started	Total amount paid in by lifetime ISA saver/ investor	Total amount paid in, plus lifetime ISA government bonus	Estimated outcome at age 60 from 0% return	Estimated outcome at age 60 from x% return	Charges and estimated inflation would reduce a x% return to
	£	£	£	£	%
18					
25					
30					
35					
40					

3.6 R In preparing the table in COBS 14 Annex 1 3.5R, *firms* must:

(1) Round all sterling amounts down to the nearest whole pound.

(2) Complete Column 2 on the basis of:

(a) the *retail client* attaining each age listed in Column 1 in the tax year in respect of which the *retail client* is proposing to make a *lifetime ISA* subscription; and

(b) a maximum annual *lifetime ISA* subscription being made on 6 April of that tax year and each subsequent tax year, up to and including the tax year in which the *retail client* would reach age 50 (based on each assumed age in (a)).

(3) Complete Column 3 on the basis of:

(a) subscriptions as calculated in Column 2; and

(b) receipt by the *retail client* of the *lifetime ISA government bonus* on:

(i) 5 April 2018 for the tax year 2017/18 (where relevant); and

(ii) 6 April of each subsequent tax year, up to and including the tax year in which the *retail client* would reach age 50 (based on each assumed age in 2(a)).

(4) Complete Columns 4 and 5 on the basis of:

(a) investment of the *retail client's* assumed subscriptions and the *lifetime ISA government bonus*, as calculated for the purposes of Columns 2 and 3;

(b) (for Column 4) a nominal annual rate of return of 0%;

(c) (for Column 5) a nominal annual rate of return equal to the maximum intermediate rate of return 'x' given in COBS 13 Annex 2 2.3R; and

(d) the outcome in sterling in real terms:

(i) based on the nominal annual rate of return in the relevant column;

(ii) net of the intermediate rate of price inflation given in COBS 13 Annex 2 2.5R;

(iii) net of the effect of any *lifetime ISA charges*; and

(iv) compounded annually at the end of each tax year, up to and including the tax year in which the *retail client* would reach age 60 (based on each assumed age in 2(a)).

(5) Complete Column 6 on the basis of a percentage rate 'y' (rounded to the nearest tenth of 1%), where 'y' is the annual rate of return which must be applied to each amount shown in Column 3 and compounded annually over the relevant period to achieve the sterling amount shown in Column 5.

4 Projections

4.1 R Where a *firm* chooses to provide a *projection*, including a *personal projection*, in relation to investing in a *lifetime ISA* in addition to the information in COBS 14 Annex 1 3 (Example outcome of retirement saving by a retail client in a lifetime ISA), a *firm* must ensure that:

(1) the information in COBS 14 Annex 1 3 is displayed at least as prominently as the *projection*;

(2) where a *firm* that communicates a *projection* for a *lifetime ISA* in relation to its *MiFID or equivalent third country business*, the *projection* complies with the future performance requirements in article 44(6) of the *MiFID Org Regulation* (see COBS 4.5A.14COBS 4.5A.14UK); and

(3) where a *firm* that communicates a *projection* for a *lifetime ISA* which is not in relation to its *MiFID or equivalent third country business*, the *projection* must be either a *standardised deterministic projection* or a *stochastic projection* in accordance with COBS 13 Annex 2.

5 Qualifying investments

5.1 G The information which a *firm* provides to a *retail client* in accordance with this Annex is intended to inform the *retail client* about the implications of that *retail client* saving and/or investing in a *lifetime ISA* (as opposed to saving and/or investing outside a *wrapper* or in a different *wrapper* or *pension wrapper*). A *firm* must still take into account and comply with any other requirements of this sourcebook in connection with the sale by the *firm* of qualifying investments to be held in a *lifetime ISA*.

Chapter 15

Cancellation

15.1 Application

15.1.1 G This chapter is relevant to a *firm* that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:

(1) most providers of retail financial products that are based on *designated investments*; and

(2) *firms* that enter into *distance contracts* with *consumers* that relate to *designated investment business*; and

(3) *firms* that enter into *distance contracts* the making or performance of which by the *firm* constitutes, or is part of, the activity of *issuing electronic money*.

Definitions

15.1.2 R In this section:

(a) "pension transfer" means a transaction, resulting from the decision of a *retail client* who is an individual to require a transfer payment of benefits from a pension scheme to:

(i) benefits under a non-occupational pension scheme; or

(ii) (for transfers from a non-occupational pension scheme) benefits under a *defined contribution occupational pension scheme*;

(b) "non-occupational pension scheme" means a *stakeholder pension scheme*, a *personal pension scheme* or a deferred annuity contract; and

(c) "pension scheme" means an *occupational pension scheme* or a non-occupational pension scheme.

15.2 The right to cancel

Cancellable contracts

15.2.1 R A *consumer* has a right to cancel any of the following contracts with a *firm*:

Cancellable contract	Cancellation period	Supplementary provisions
Life and pensions:		
• a *life policy* (including a *pension annuity*, a *pension policy* or within a *wrapper*) • a contract to join a *personal pension scheme* or a *stakeholder pension scheme* • a *pension contract* •a contract for a pension transfer • a contract to vary an existing *personal pension scheme* or *stakeholder pension scheme* by exercising, for the first time, an option to make *income withdrawals*	30 calendar days	For a *life policy* effected when opening or transferring a *wrapper*, the 30 calendar day right to cancel applies to the entire arrangement For a contract to buy a *unit* in a *regulated collective investment scheme* within a *pension wrapper*, the cancellation right for 'non-life/pensions (advised but not at a distance)' below may apply Exemptions may apply (see COBS 15 Annex 1)
Lifetime ISAs (advised but not at a distance):		
• a non-*distance contract* to open or transfer a *lifetime ISA*	30 calendar days	These rights arise only following a *personal recommendation* of the contract (by the *firm* or any other *person*). Exemptions may apply (see COBS 15 Annex 1)
Cash deposit ISAs:		
• a contract for a *cash deposit ISA*	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)
Non-life/pensions (advised but not at a distance): a non-*distance contract*:		
• to *buy* a *unit* in a *regulated collective investment scheme* (in-	14 calendar days	These rights arise only following a *personal recommendation* of the

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Cancellable contract	Cancellation period	Supplementary provisions
cluding within a *wrapper* or *pension wrapper*) • to open or transfer a child trust fund (*CTF*) • to open or transfer an *ISA* (other than a lifetime ISA) • for an *Enterprise Investment Scheme*		contract (by the *firm* or any other *person*). For a *unit* bought when opening or transferring a *wrapper* or *pension wrapper*, the 14 calendar day right to cancel applies to the entire arrangement. Exemptions may apply (see COBS 15 Annex 1).
Non-life/pensions (at a distance): a *distance contract*, relating to:		
• *accepting deposits* • *designated investment business* • *issuing electronic money*	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)

[**Note:** article186 of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

15.2.2 G

(1) If the same transaction attracts more than one right to cancel, the *firm* should apply the longest cancellation period applicable.

(2) A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *consumer* as those in this chapter, unless the differences are clearly explained.

(3) If the right to cancel applies to a *wrapper* or *pension wrapper* and underlying investments, the *firm* may give the *consumer* the option of cancelling individual components separately if it wishes.

Start of cancellation period

15.2.3 R

The cancellation period begins:

(1) either from the day of the conclusion of the contract, except in respect of contracts relating to *life policies* where the time limit will begin from the time when the *consumer* is informed that the contract has been concluded; or

(2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook or the *PRIIPs Regulation*, if that is later than the date referred to above.

[**Note:** article186 of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

15.2.4 G

If a *firm* does not give a *consumer* the required information about the right to cancel and other matters, the contract remains cancellable and the *consumer* will not be liable for any *shortfall*.

Disclosing a right to cancel or withdraw

15.2.5 R

(1) The *firm* must disclose to the *consumer*:

(a) in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract that attracts a right to cancel or withdraw; and

(b) in a *durable medium*;

the existence of the right to cancel or withdraw, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it indicating the address to which the notification of cancellation or withdrawal should be sent.

(1A) If the *firm* offers to facilitate, directly or through a third party, the payment of *adviser charges* or *consultancy charges*, it must disclose to the *consumer* at the same time as it makes the disclosure in (1):

(a) whether any refund will include an *adviser charge* or *consultancy charge*; and

(b) that the *consumer* may be liable to pay any outstanding *adviser charges* or *consultancy charges*.

(2) This *rule* applies only where a *consumer* would not otherwise receive similar information under a *rule* in this sourcebook or in a *key information document* from the *firm* or another *authorised person* (such as under the distance marketing disclosure rules (■ COBS 5.1.1 R to ■ 5.1.4 R), ■ COBS 14 (Providing product information) or the *PRIIPs Regulation*).

15.3 Exercising a right to cancel

Notice of exercise

15.3.1 R If a *consumer* exercises his right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a durable medium available and accessible to the recipient, is dispatched before the deadline expires.

[**Note:** article 6 (6) of the *Distance Marketing Directive*]

15.3.2 R A *consumer* need not give any reason for exercising his right to cancel.

[**Note:** article 6(1) of the *Distance Marketing Directive*]

15.3.3 G The *firm* should accept any indication that the *consumer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as the date when the notification was dispatched.

Record keeping

15.3.4 R The *firm* must make adequate records concerning the exercise of a right to cancel or withdraw and retain them:

(1) indefinitely in relation to a pension transfer, *pension opt-out* or *FSAVC*;

(2) for at least five years in relation to a *life policy*, *pension contract*, *personal pension scheme*, *stakeholder pension scheme* or *lifetime ISA*; and

(3) for at least three years in any other case.

15.4 Effects of cancellation

Termination of contract

15.4.1 R By exercising a right to cancel, the *consumer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

15.4.2 R

(1) This *rule* applies in relation to a *distance contract* that is not a *life policy*, *personal pension scheme*, *cash deposit ISA*, *cash-only lifetime ISA* or *CTF*.

(2) When the *consumer* exercises their right to cancel they may be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The performance of the contract may only begin after the *consumer* has given their approval. The amount payable must not:

(a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract; and

(b) in any case be such that it could be construed as a penalty.

(3) The *firm* may not require the *consumer* to pay any amount on the basis of this *rule* unless it can prove that the *consumer* was duly informed about the amount payable, in conformity with the distance marketing disclosure rules. However, in no case may the *firm* require such payment if it has commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive*]

Shortfall

15.4.3 R

(1) The *firm* may require the *consumer* to pay for any loss under a contract caused by market movements that the *firm* would reasonably incur in cancelling it. The period for calculating the loss shall end on the day on which the *firm* receives the notification of cancellation.

(2) This *rule*:

(a) does not apply for a *distance contract* or for a contract established on a regular or recurring premium or payment basis; and

(b) only applies if the *firm* has complied with its obligations to disclose information concerning the right to cancel.

Obligations on cancellation

15.4.4 R The *firm* must, without any undue delay and no later than within 30 calendar days, return to the *consumer* any sums it has received from him in accordance with the contract, except for any amount that the *consumer* may be required to pay under this section. This period shall begin from the day on which the *firm* receives the notification of cancellation.

[**Note:** article 7(4) of the *Distance Marketing Directive*]

15.4.5 R The *firm* is entitled to receive from the *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the *consumer* dispatches the notification of cancellation.

[**Note:** article 7(5) of the *Distance Marketing Directive*]

15.4.6 R Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

15.5 Special situations

Contracts with trustees and operators of pension schemes

15.5.1 R In this chapter:

(1) references to a *consumer* include the trustees of an *occupational pension scheme* and the trustees or *operator* of a *personal pension scheme* or *stakeholder pension scheme*; and

(2) any contract with such *persons* is to be treated as a non-*distance contract*.

Other legislation including for child trust funds and automatic enrolment into pensions

15.5.2 R This chapter applies as modified to the extent necessary for it to be compatible with any enactment.

15.5.3 G For example:

(1) the *Child Trust Fund Regulations* contain provisions relevant to cancellation rights; in particular they provide that any uninvested sums held in connection with a *CTF* should be held in a designated bank account; and the effect of conditions 4(a) and (b) in regulation 5 of the *Child Trust Fund Regulations* (applicable to non-*HMRC allocated CTF*) is that a *CTF* opened by way of *distance contract* has a cancellable management agreement in all cases and the *CTF* cannot be opened until the cancellation period has expired, therefore the price fluctuation exemption is not engaged;

(2) where legislation does not permit sums within a *personal pension scheme* or *CTF* to be returned to a *consumer*, the requirement to do so on cancellation is modified to permit payment to another provider on behalf of the *consumer*; the *firm* should notify him, where relevant, as soon as possible that it holds money awaiting re-investment instructions; if that money is held in a non-interest bearing account this should be drawn to his attention;

(3) the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 contain provisions relevant to cancellation rights; in particular they provide rights of opt-out from an *automatic enrolment scheme*; the cancellation rights in this chapter are modified to permit a provider to adopt the opt-out process in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 in relation to all members of an *automatic enrolment scheme*; the cancellation rules will continue to

apply for any single premium contributions or transfers where these would normally attract this right.

Automatic cancellation of an attached distance contract

15.5.4 G When a *consumer* cancels a *distance contract* under this chapter, his notice may also operate to cancel any attached contract which is also a distance financial services contract unless the *consumer* gives notice that cancellation of the main contract is not to operate to cancel the attached contract (see regulation 12 of the *Distance Marketing Regulations*). Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.

Appointed representatives

15.5.5 G This chapter does not act to cancel *distance contracts* entered into by an *appointed representative* or where applicable, by a *tied agent*, as principal such as a *distance contract* to provide advisory services, but the *Distance Marketing Regulations* (regulations 9 to 13, see regulation 4(3)) may have this effect.

Maxi-ISAs

15.5.6 G Where a *life policy* or *unit* bought on opening or transferring an *ISA* is cancellable, the right to cancel, or substitute right to withdraw, applies to the entire arrangement. For example, a maxi-ISA comprising a *life policy* in the stocks and shares component and a *cash component* would be cancellable as a whole with a cancellation period of 30 calendar days. However, a *firm* is free to give the *consumer* the option of cancelling individual components separately with the same cancellation period if it wishes.

Exemptions from the right to cancel

		Exemptions for life policies and pension contracts (non-distance)
1.1	R	There is no right to cancel a non-*distance contract* that is a *life policy* or a *pension contract*: (1) that is a *pension fund management* policy; or (2) that relates to or is associated with securing benefits under a *defined benefits pension scheme*; or (3) for a term of six months or less, unless it is a single *premium* contract where the designated retirement date is within six months of the date of the policy; or (4) that is effected by the trustees of an *occupational pension scheme* or the employer, trustees or *operator* of a *stakeholder pension scheme* and that represents a: (a) *pension buy-out contract*; or (b) purchase of a without-profits deferred *pension annuity*; or (c) *defined benefits pension scheme* or a single *premium* payment to any *occupational pension scheme* with a pooled fund (that is, underlying investments are not earmarked for individual scheme members); or (d) purchase made to insure and secure members' pension benefits under a *money-purchase occupational scheme* or *stakeholder pension scheme* (unless it is the master, first or only policy); or (5) if the *consumer*, at the time he signs the application, is *habitually resident* outside the *UK* and is not present in the *UK*.
1.2	G	There is no right to cancel a non-*distance contract* for a *traded life policy*. This is because the 30-day right to cancel a *life policy* (in COBS 15.2.1 R) applies at the point of conclusion of the *life policy* not on its assignment. However, there may be a 14-day right to cancel a *distance contract* for a *traded life policy* unless an exemption applies, since that *distance contract* relates to *designated investment business*.
		Exemption for SIPPs
1.3	R	There is no right to cancel a contract to join a *SIPP* whose performance has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel.
1.4	G	If a *consumer* requests that a *firm* complete a transaction to join a *SIPP* before the expiry of the cancellation period, the *firm* should, in having regard to the information needs of the *consumer*, make him aware that he will lose his right to cancel and satisfy itself on reasonable grounds that the customer understands the cost and other implications.
		Exemptions for certain pension arrangements (the 'cancellation substitute')
1.5	R	There is no right to cancel: (1) a contract for or funded (wholly or in part) from a pension transfer; or (2) a *pension annuity* due to commence within a year and a day of the contract or a variation of one with similar commencement; or (3) the exercise of an option to make *income withdrawals*;

to the extent that the right to cancel is replaced with a pre-contract right to withdraw the *consumer's* offer of at least 14 calendar days. The combined period of the right to withdraw and any residual right to cancel must be at least 30 calendar days.

Exemption for pension compensation

1.6 R There is no right to cancel a *pension annuity*, a *pension policy*, a *pension contract*, or a contract to join a *personal pension scheme* or *stakeholder pension scheme*, which in each case is funded (wholly or in part) from payments derived from compensation or redress following a review undertaken in relation to a complaint.

Exemption for annuities after death of the life assured

1.7 R A *firm* need not accept notification of cancellation of a *pension annuity* contract if the life (or any of the lives) assured under it has died before notice is given.

Exemptions for units (non-distance)

1.8 R There is no right to cancel a non-*distance contract* to *buy* a *unit* in a *regulated collective investment scheme*:

(1) if the *unit* is not purchased from the scheme's *operator*, from the *operator's associate* acting as provider of a *wrapper*; or

(2) if the *consumer* is not a *retail client*; or

(3) if the contract represents an exchange of *units* between *sub-funds* of the same *umbrella*; or

(4) if the contract relates to a change between *units* of one class and *units* of another class in the same *scheme*; or

(5) if the contract relates to a *recognised scheme* and is with an *operator* who is not an *authorised person* or carrying on business in the *UK*; or

(6) if the *consumer* is not *habitually resident* in the *UK* at the date of the offer of the contract; or

(7) if the *firm* has reasonable grounds for assuming that no *personal recommendation* of the contract was provided by anyone carrying on *designated investment business* in the *UK*; or

(8) for the second and subsequent purchases of *units* under recurring single payment *unit* savings plans, provided that:
(a) the intention or option to make a series of single payments is disclosed at the outset (for example in pre-contract disclosure documents); or
(b) the intention is evidenced (for example, by the establishment of a direct debit mandate).

Exemptions for ISAs, CTFs and EISs (non-distance)

1.9 R There is no right to cancel a non-*distance contract*:

(1) to open or transfer an *ISA* (mini or maxi and including all components whatever the underlying investment, but not a *cash deposit ISA* or an *ISA* containing a *life policy*); or

(2) to open or transfer a *CTF*; or

(3) [deleted]

(4) for an *EIS*;

provided that:

(5) (for an *EIS* or *ISA* which is not a *lifetime ISA*) the right to cancel is replaced with a seven calendar day, pre-contract right to withdraw the *consumer's* offer; or

(5A) (for a *lifetime ISA*) the right to cancel is replaced with a fourteen calendar day, pre-contract right to withdraw the *consumer's* offer; or

(6) the contract relates to an *EIS* or a non-*packaged product ISA* (which is not a *lifetime ISA*) or *CTF* and is entered into following an explanation that neither a right to cancel nor a right to withdraw will apply given in accordance with the relevant rules on pre-contractual disclosure; or

(7) (for an *ISA* or *EIS*) the contract entered into is a second or subsequent *ISA* or *EIS* on substantially the same terms (such as mini-to-mini *ISA* or maxi-to-maxi *ISA*) as an *ISA* or *EIS* purchased from the same *ISA manager* or *EIS manager* in the previous tax year.

Exemptions for distance contracts (all products and services)

1.10 R There is no right to cancel a *distance contract*:

(1) whose price depends on fluctuations in the financial market outside the *firm's* control, which may occur during the cancellation period, such as:

(a) foreign exchange; or

(b) money market instruments; or

(c) transferable securities; or

(d) units in collective investment undertakings; or

(e) financial-futures contracts, including equivalent cash-settled instruments; or

(f) forward interest-rate agreements; or

(g) interest-rate, currency and equity swaps; or

(h) options to acquire or dispose of any instruments referred to above including cash-settled instruments and options on currency and on interest rates; or

(2) whose performance has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel; or

(3) to *deal as agent*, *advise* or *arrange* if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[**Note:** article 6(2) and recital 19 of the *Distance Marketing Directive*]

1.11 R In the case of *distance contracts* for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the right to cancel shall apply only to the initial agreement.

[**Note:** article 1(2) of the *Distance Marketing Directive*]

Chapter 16

Reporting information to clients (non-MiFID provisions)

16.1 Application

16.1.1	R	[deleted]
16.1.2	R	■ COBS 16.2 to ■ COBS 16.4 apply in relation to *designated investment business* other than *MiFID, equivalent third country or optional exemption business*.

16.2 Occasional reporting

Execution of orders other than when managing investments

16.2.1 R

(1) If a *firm* has carried out an order in the course of its *designated investment business* on behalf of a *client*, it must:

(a) promptly provide the *client*, in a *durable medium*, with the essential information concerning the execution of the order;

(b) in the case of a *retail client*, send the *client* a notice in a *durable medium* confirming the execution of the order and such of the *trade confirmation information* (■ COBS 16 Annex 1R) as is applicable:

(i) as soon as possible and no later than the first *business day* following that execution; or

(ii) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party; and

(c) supply a *client*, on request, with information about the status of his order.

(2) Paragraph (1) does not apply to a *firm managing investments*.

(3) Paragraph (1)(b) does not apply if the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *client* by another *person*.

(4) Paragraphs (1)(a) and (b) do not apply to an order executed on behalf of a *client* that relates to a bond funding a mortgage loan agreement with the *client*. The report on the transaction must be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.

(5) If a *firm* carries out an order for a *retail client* relating to *units* or *shares* in a collective investment undertaking that is part of a series of orders that are executed periodically, it must:

(a) comply with paragraph (1)(b) in relation to that order; or

(b) provide the *client* at least once every six months with such of the *trade confirmation information* (■ COBS 16 Annex 1R) as is applicable in relation to each transaction in that series carried out in the relevant reporting period.

(6) In relation to subscription and *redemption* orders for *units* in a *UCITS scheme* executed by an *authorised fund manager*, paragraphs (1), (3) and (5) of this *rule* apply as if references to:

(a) a *client* and to a *retail client* were references to a *Unitholder* in the *scheme*; and

(b) *trade confirmation information* in paragraphs (1)(b) and (5)(b) were to the information in paragraph (7).

(7) The notice referred to in paragraph (1)(b) must, where applicable, for subscription and *redemption* orders for *units* in a *UCITS scheme* executed by an *authorised fund manager*, include the following information:

(a) the identification of the *management company*;

(b) the name or other designation of the *Unitholder*;

(c) the date and time of receipt of the order and method of payment;

(d) the date of execution;

(e) the identification of the *UCITS scheme* or;

(f) the nature of the order (subscription or *redemption*);

(g) the number of *units* involved;

(h) the *unit* price at which the *units* were subscribed or redeemed;

(i) the reference valuation date;

(j) the gross value of the order including charges for subscription or net amount after charges for *redemptions*; and

(k) the total sum of the commissions and expenses charged and where the investor so requests, an itemised breakdown.

[**Note:** article 24 of the *UCITS implementing Directive*]

16.2.2 G The requirement concerning orders relating to bonds funding a mortgage loan agreement is unlikely to be relevant to products in the *United Kingdom* market.

16.2.3 R For the purposes of calculating the unit price in the *trade confirmation information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

16.2.3A G In determining what is essential information, a *firm* should consider including:

(1) for transactions in a *derivative*:

(a) the maturity, delivery or expiry date of the derivative;

(b) in the case of an *option*, a reference to the last exercise date, whether it can be exercised before maturity and the strike price;

(c) if the transaction *closes out* an open *futures* position, all essential details required in respect of each contract comprised in the open position and each contract by which it was *closed out* and the profit or loss to the *client* arising out of *closing out* that position (a difference account);

(2) for the exercise of an *option*:

(a) the date of exercise, and either the time of exercise or that the *client* will be notified of that time on request;

(b) whether the exercise creates a sale or purchase in the underlying asset; and

(c) the strike price of the *option* (for a currency *option*, the rate of exchange will be the same as the strike price) and, if applicable, the total consideration from or to the *client*; and

(3) the fact that the transaction involves any dividend or capitalisation or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the *investment*, and under the terms of the transaction the benefit of which will not pass to the purchaser.

Guidance on the requirements

16.2.4 G Where a *firm* executes an order in tranches, the *firm* may, where appropriate, indicate the trading time and the execution venue in a way that is consistent with this, such as, "multiple". In accordance with the *client's best interests rule*, a *firm* should provide additional information at the *client's* request.

16.2.5 G In accordance with COBS 2.4.9 R, a *firm* may dispatch a confirmation to an agent, other than the *firm* or an *associate* of the *firm*, nominated by the *client* in writing.

Special cases

16.2.6 R A *firm* need not despatch a confirmation if:

(1) the *firm* has agreed with the *client* (in the case of a *retail client*, in writing and with the *client's* informed consent) that confirmations need not be supplied, either generally or in specified circumstances; or

(2) the *designated investment* is a *life policy*, *stakeholder pension scheme* or a *personal pension scheme* (other than a *SIPP*); or

(3) the *designated investment* is held within a *CTF* and the statement provided under the *CTF Regulations* includes the information that would have been contained in a confirmation under this section (other than information that has since become irrelevant).

Record keeping: occasional reporting

16.2.7 R A *firm* must retain a copy of any confirmation despatched to a *client* under this section for a period of at least three years from the date of despatch.

16.3 Periodic reporting

Provision by the firm and contents

16.3.1 R

(1) If a *firm* is *managing investments* on behalf of a *client*, it must provide the *client* with a *periodic statement* in a *durable medium* unless:

(a) such a statement is provided by another *person*; or

(b) all of the conditions in (1A) are satisfied.

(1A) The conditions are that:

(a) the *firm* provides the *client* with access to an online system which qualifies as a *durable medium*;

(b) the online system provides the *client* with easy access to:

(i) up-to-date valuations of the *client's designated investments* and *client money*; and

(ii) the information that would otherwise be contained in a *periodic statement*; and

(c) the *firm* has evidence that the *client* has accessed a valuation of their *designated investments* or *client money* at least once during the previous quarter.

(2) If the *client* is a *retail client*, the *periodic statement* must include such of the *periodic information* (■ COBS 16 Annex 2R) as is applicable.

16.3.2 R

(1) In the case of a *retail client*, the *periodic statement* must be provided once every six *months*, except in the following cases:

(a) if the *retail client* so requests, the *periodic statement* must be provided every three *months*;

(b) if the *retail client* elects to receive information about executed transactions on a transaction-by-transaction basis (■ COBS 16.3.3 R) and there are no transactions in *derivatives* or other securities giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures, the *periodic statement* must be provided at least once every twelve *months*;

(c) if the agreement between a *firm* and a *retail client* for the *managing of investments* authorises a leveraged portfolio, the *periodic statement* must be provided at least once a *month*.

(2) A *firm* must inform a *retail client* that he has the right to request the provision of a *periodic statement* every three *months*.

16.3.3 R

(1) If the *client* elects to receive information about executed transactions on a transaction-by-transaction basis, a *firm managing investments* must provide promptly to the *client*, on the execution of a transaction, the essential information concerning that transaction in a *durable medium*.

(2) If the *client* is a *retail client*, the *firm* must send the *client* a notice confirming the transaction and containing such of the information identified in column (1) of the table in ■ COBS 16 Annex 1R as is applicable:

(a) no later than the first *business day* following that execution; or

(b) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party;

unless the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *retail client* by another *person*.

16.3.4 G

In accordance with ■ COBS 2.4.9 R, a *firm* may dispatch a periodic statement to an agent, other than the *firm* or an *associate* of the *firm*, nominated by the *client* in writing.

16.3.5 R

For the purposes of calculating the unit price in the *trade confirmation information* or *periodic information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

16.3.6 R

(1) If a *firm*:

(a) *manages investments* for a *retail client*; or

(b) operates a *retail client* account that includes an uncovered open position in a contingent liability transaction,

it must report to the *retail client* any losses exceeding any predetermined threshold, agreed between it and the *retail client*.

(2) The *firm* must report:

(a) no later than the end of the *business day* in which the threshold is exceeded; or

(b) if the threshold is exceeded on a non-*business day*, the close of the next *business day*.

Contingent liability transactions

16.3.7 R

For the purposes of this section, a contingent liability transaction is one that involves any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument.

16.3.8 R

[intentionally blank]

16.3.9 G When providing a *periodic statement* to a *retail client*, a *firm* should consider whether to include:

(1) the *collateral* value in respect of any contingent liability transaction in the *client*'s portfolio during the relevant period; and

(2) *option* account valuations in respect of each open *option* written by the *client* in the *client*'s portfolio at the end of the relevant period; stating:

(a) the *share*, *future*, index or other *investment* involved;

(b) the trade price and date for the opening transaction, unless the valuation statement follows the statement for the period in which the option was opened;

(c) the market price of the contract; and

(d) the exercise price of the contract.

(3) Option account valuations may show an average trade price and market price in respect of an *option* series if the *retail client* buys a number of contracts within the same series.

Periodic reporting: special situations

16.3.10 R A *firm* need not provide a *periodic statement*:

(1) to a *client* habitually resident outside the *United Kingdom* if the *client* concerned has so requested or the *firm* has taken reasonable steps to establish that he does not wish to receive it;

(2) in respect of a *CTF*, if the statement provided under the *CTF Regulations* contains the *periodic information*.

Record keeping: periodic reporting

16.3.11 R A *firm* must make, and retain, a copy of any *periodic statement* for a period of at least three years from the date of despatch.

16.4 Statements of client designated investments or client money

16.4.1 R

(1) A *firm* that holds *client designated investments* or *client money* for a *client* must send that *client* at least once a year a statement in a *durable medium* of those *designated investments* or that *client money* unless:

(a) such a statement has been provided in a *periodic statement*; or

(b) the *firm*:

(i) provides the *client* with access to an online system, which qualifies as a *durable medium*, where up-to-date statements of a *client's designated investments* or *client money* can be easily accessed by the *client*; and

(ii) the *firm* has evidence that the *client* has accessed an up-to-date statement at least once during the previous quarter.

(2) A *credit institution* need not send a statement in respect of *deposits* held by it.

(3) This *rule* does not apply in relation to a *firm* holding *client designated investments* or *client money* under a *personal pension scheme* or a *stakeholder pension scheme*.

(4) A *CTF* account provider holding *client designated investments* or *client money* under a *CTF* must provide a statement but need not do so more frequently than required by Regulation 10 of the *CTF Regulations*.

16.4.2 R

A *firm* must include the following information in a statement of *client* assets referred to under this section:

(1) details of all the *designated investments* or *client money* held by the *firm* for the *client* at the end of the period covered by the statement;

(2) the extent to which any *client designated investments* or *client money* have been the subject of *securities financing transactions*; and

(3) the extent of any benefit that has accrued to the *client* by virtue of participation in any *securities financing transactions*, and the basis on which that benefit has accrued.

16.4.3 R

In cases where the portfolio of a *client* includes the proceeds of one or more unsettled transactions, the information in a statement provided under this section may be based either on the trade date or the settlement date,

provided that the same basis is applied consistently to all such information in the statement.

16.4.4 R A *firm* which holds *designated investments* or *client money* and is *managing investments* for a *client* may include the statement under this section in the *periodic statement* it provides to that *client*.

16.4.5 G In reporting to a *client* in accordance with this section, a *firm* should consider whether to provide details of any assets loaned or charged including:

(1) which *investments* (if any) were at the end of the relevant period loaned to any third party and which *investments* (if any) were at that date charged to secure borrowings made on behalf of the portfolio; and

(2) the aggregate of any interest payments made and income received during the period in respect of loans or borrowings made during that period

16.4.6 G *Firms* subject to either or both the *custody chapter* and the *client money chapter* are reminded of the reporting obligations to *clients* in ■ CASS 9.2 (Prime broker's daily report to clients) and ■ CASS 9.5 (Reporting to clients on request).

16.5 Quotations for surrender values

16.5.1 R When a *long-term insurer* receives any indication that a *retail client* wishes to surrender a *life policy* which is of the type that may be traded on an existing secondary market for *life policies*, it must, before accepting a surrender, make the *policyholder* aware that he may be able to sell his *policy* instead, how he may do so and that there may be financial benefits in doing so.

16.6 Communications to clients – life insurance, long term care insurance and drawdown pensions

Disclosure for life insurance contracts: information to be provided during the term of the contract

16.6.1 R

(1) This section applies to a *long-term insurer*, unless, at the time of application, the *client*, other than an *EEA ECA recipient*, was *habitually resident* outside the *United Kingdom* and he was not present in the *United Kingdom*.

(2) In addition, COBS 16.6.8 R applies to an *operator* of a *personal pension scheme* or *stakeholder pension scheme* in relation to a *retail client* who elects to make *income withdrawals*.

16.6.2 R

(1) The *policyholder* must be informed if during the term of a *life policy* entered into on or after 1 July 1994 there is any change in the following information:

(a) the *policy* conditions;

(b) the name of the *insurer*, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract; and

(c) the information in (8) to (13) of COBS 13 Annex 1 (The Solvency II Directive information) in the event of a change in the *policy* conditions or amendment of the law applicable to the contract.

(2) A notification in (1) must be made:

(a) in a clear and accurate manner and in writing; and

(b) in an official language of the *State of commitment* or in another language if the *policyholder* so requests and the law of the *State of commitment* so permits or the *policyholder* is free to choose the law applicable.

[**Note:** article 185(5) and (6) of the *Solvency II Directive*]

16.6.3 R

If a *life policy* entered into on or after 1 July 1994 provides for the payment of bonuses and the amounts of bonuses are unspecified, the *long-term insurer* must, in every calendar year except the first, either:

(1) notify the *policyholder* in writing of the amount of any bonus which has become payable under the contract, and which has not previously been notified under this *rule*; or

(2) give the *policyholder* in writing sufficient information to enable him to determine the amount of any such bonus.

[**Note:** in respect of (1), article 185(5) of the *Solvency II Directive*]

16.6.3A R If a *firm* provides figures, on or after 1 January 2016, about the potential future development of bonuses under a *with-profits policy* it must inform the *policyholder* annually in writing of any differences between the actual bonuses payable to date and the figures previously provided.

[**Note:** article 185(5) of the *Solvency II Directive*]

16.6.4 R

(1) When a *firm* provides information in accordance with this section, it must provide the information in a *durable medium*, unless (2) applies.

(2) If the contract is being made by telephone, the *firm* may give the information orally to the *customer*. If the *customer* enters into the contract, a written version of the required information must be sent to the *customer* within five *business days* of the contract being entered into.

16.6.5 R Where a *life policy* is effected jointly, the information required by this section may be sent to the first named *client*.

16.6.6 R A *firm* must make an adequate record of information provided to a *customer* under this section and retain that record for a minimum period after the information is provided of five years.

Long term care insurance

16.6.7 R At each anniversary of the date on which a *long-term care insurance contract* which is based on single premium investment bonds was entered into, the *insurer* must:

(1) provide the *retail client* with a table based on the format of ■ COBS 13 Annex 3 2.2R containing at least the current fund value and projected future *policy* values (as in column "What you might get back");

(2) where it is the case, inform the *retail client* of the possibility that future policy values may be insufficient to fulfil the original purpose of the contract; and

(3) inform the *retail client* how to obtain advice on *investments* in respect of *long-term care insurance contracts*, and that it is in his best interest to do so.

Drawdown pensions: annual statements

16.6.7A R In the rest of ■ COBS 16.6:

(1) "annual statement" is the information required to be provided to a *retail client* on an annual basis at ■ COBS 16.6.8R;

(2) "cash terms" means pounds and pence;

(3) "cash-like investments" includes *cash* or *near cash*, units in a *regulated money market fund*, or units in a fund authorised as a money market fund for the purposes of the UK version of the European Parliament and Council Regulation on money market funds (2017/1131/EU), which is part of UK law by virtue of the *EUWA*; and

(4) "drawdown fund" means either a *capped drawdown pension fund* or *flexi-access drawdown pension fund*;

(5) a *retail client* is a "non-advised *retail client*" if a *firm* has not determined on reasonable grounds that the client has received a *personal recommendation* in relation to how to invest the sums or assets in their drawdown fund, in accordance with ■ COBS 19.10.10R (4);

Income withdrawals - annual statements

16.6.8 R At intervals of no longer than 12 months, beginning on the date a *retail client* first takes a *pension commencement lump sum* or an *uncrystallised funds pension lump sum payment*, or first makes an *income withdrawal*, the relevant *operator* of a *personal pension scheme* or *stakeholder pension scheme* must:

(1) provide the *retail client* with such information as is necessary for the *retail client* to review the decision, including where relevant the information required by ■ COBS 13 Annex 2 2.9R (Additional requirements: drawdown pensions and regular uncrystallised funds pension lump sum payment), ■ COBS 16.6.8AR (pathway investments) and ■ COBS 16.6.10R (costs and charges disclosure); and

(2) inform the *retail client* that if their circumstances or retirement objectives have changed it may be in their best interests to:

(a) review their choice of pension product;

(b) review their investment choices;

(c) take regulated advice to understand their options at retirement; and

(d) seek out guidance.

16.6.8A R If a *retail client* is invested in a *pathway investment* the annual statement must include the following:

(1) a short description of each *pathway investment* the *retail client* is invested in, including the corresponding *investment pathway* option under ■ COBS 19.10.17R(1) and the current value of each *pathway investment* in cash terms;

(2) (for those *retail clients* invested in two or more *pathway investments*) how the *retail client's* drawdown fund is split, in cash terms, across the different *pathway investments* and the corresponding *investment pathway* options;

(3) a short description of the *investment pathway* options the *retail client* is not currently invested in (■ COBS 19.10.17R(1));

(4) a statement reminding the *retail client* that they can, at any time:

(a) select a different *investment pathway* option and change their *pathway investment*;

(b) select an investment that is not a *pathway investment*;

(c) (where this option is available) split their drawdown fund across two or more *pathway investments*;

(d) choose a different product to access their pension savings;

(e) shop around, with an explanation of how they may do so.

16.6.8B G If a *retail client* has been invested in the same *pathway investment* for 5 years (or a multiple of 5 years) a *firm* should consider including in the *retail client's* next annual statement:

(1) a reminder of the number of years the *retail client* has been invested in the same *pathway investment*; and

(2) a statement that the *retail client* should review the *investment pathway* option.

16.6.9 G The information provided to the *retail client* in ■ COBS 16.6.8R(1) is likely to be sufficient for the *client* to review the decision if it contains at least one of the following (in addition to the information required by ■ COBS 16.6.8AR and ■ COBS 16.6.10R, as relevant):

(1) the information required by ■ COBS 13 Annex 2 2.9R (Additional requirements: drawdown pensions and regular *uncrystallised funds pension lump sum* payments); or

(2) the effect of any significant one-off withdrawals or payments since the previous information was provided; or

(3) (where regular income is being taken) information about the sustainability of the *client's* income over time, which may refer to:

(a) the proportion of the fund remaining since outset; or

(b) an indication of when the fund may cease to exist; or

(c) the rate of withdrawals or payments relative to a sustainable rate; or

(4) (if a *client* has only taken a *pension commencement lump sum*) information about their investment, fund choices, fund value and charges.

Personal or stakeholder pension schemes in decumulation: actual costs and charges disclosure

16.6.10 R (1) The annual statement must include costs and charges information which must be:

(a) based on actual costs and charges (including transaction costs and the cost of advice) charged by the *operator* or other parties, which have been paid out of the *retail client's*:

drawdown fund; or

personal pension scheme or *stakeholder pension scheme* from which an *uncrystallised funds pension lump sum payment* was paid;

(b) aggregated and totalled; and

(c) expressed in pounds and pence.

(2) When a *retail client's personal pension scheme* or *stakeholder pension scheme* is in partial drawdown, the *operator*:

(a) may include costs and charges information for the whole pension scheme; and

(b) must make clear whether the costs and charges information relates to the whole pension scheme or only to the drawdown fund.

(3) If the *operator* does not have the information necessary to comply with (1), it must take all reasonable steps to obtain it.

(4) If the operator does not have exact figures for certain costs and charges, despite taking all reasonable steps to obtain them, the *operator*:

(a) must provide a reasonable estimate of such costs and charges when providing the costs and charges information; or

(b) if it is not possible to provide a reasonable estimate of such costs and charges, must include a written statement, with the costs and charges information, to explain which costs and charges are not included.

(5) The *operator* must include a written statement with the costs and charges information, stating whether any adviser remuneration, including *adviser charges*, *consultancy charges*, *commission* or *commission equivalent*, is included in the aggregated costs and charges figure.

(6) The *operator* must make clear what period is covered by the costs and charges information.

16.6.11 R ■ COBS 16.6.10R does not apply where costs and charges are discharged by payment of the fixed price of a drawdown pension product, which has been clearly disclosed to the *retail client*.

16.6.12 G Where ■ COBS 16.6.10R(1)(a)(ii) applies, the annual statement must include costs and charges for the whole of the *retail client's personal pension scheme* or *stakeholder pension scheme*.

16.6.13 G The *operator's* reasonable steps to obtain costs or charges information should include, where relevant, requesting this information from third parties that provide services relating to the *retail client's* drawdown fund, *personal pension scheme* or *stakeholder pension scheme*.

Trade confirmation and periodic information

This annex forms part of ■ COBS 16.2.1 R

	General	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
1.	the reporting *firm* identification;	Y	
2.	the name or other designation of the *client*;	Y	
3.	the trading day;	Y	Y
4.	the trading time;	Y	Y
5.	the type of the order (for example, a limit order or a market order);	Y	Y
6.	the venue identification;	Y	Y
7.	the instrument identification;	Y	Y
7A.	the underlying instrument identification (Note 1);	Y	Y
7B.	the instrument type (Note 2);	Y	Y
7C.	the maturity date (Note 3);	Y	Y
7D.	the derivative type (Note 4);	Y	Y
7E.	put/call (Note 5);	Y	Y
7F.	the strike price (Note 6);	Y	Y
7G.	the price multiplier (Note 7);	Y	Y
8.	the buy/sell indicator;	Y	Y
9.	the nature of the order if other than buy/sell;	Y	Y
9A.	the counterparty;	Y	Y
10.	the quantity;	Y	Y

	General	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
10A.	the quantity notation (Note 8);	Y	Y
11.	the unit price;	Y	Y
12.	the total consideration;	Y	Y
13.	a total sum of the commissions and expenses charged (for a *collective investment scheme operator*, initial *charges* may be disclosed in cash or percentage terms)and, where the *retail client* so requests, an itemised breakdown, including, where relevant, the amount of any *mark-up or mark-down* imposed by the *firm* or its *associate* where the *firm* or *associate* acted as *principal* in *executing* the transaction, and the *firm* owes a duty of best execution to the *client*;	Y	Y
14.	the rate of exchange obtained where the transaction involves a conversion of currency;	Y	Y
15.	[intentionally blank]		
16.	[intentionally blank]		
17.	the *client*'s responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the *client*;	Y	
18.	if the *client's* counterparty was the *firm* itself	Y	

	General	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
	or any person in the *firm's group* or another *client* of the *firm*, the fact that this was the case unless the order was *executed* through a trading system that facilitates anonymous trading.		
19.	the transaction reference number (Note 9); and	Y	Y
20.	the customer / client identification (Note 10).	Y	Y

A *firm* may provide the *client* with the information referred to in this Annex using standard codes if it also provides an explanation of the codes used.

Firms are reminded that COBS 16.2.1R only requires a *retail client* to be provided with the *trade confirmation information* that applies to them. Where a piece of information is not applicable to the circumstances of a particular trade, the *firm* is not required to report that information to the *client* or to include the field on the confirmation.

The following Notes explain certain of the information requirements in the table above.

Note 1	This is the instrument identification applicable to the security that is the underlying asset in a derivative contract.
Note 2	This is the harmonised classification of the instrument that is the subject of the transaction (e.g. equity, bond). This item is only required when an explanation of the instrument type has not been provided in relation to the instrument identification in line 7.
Note 3	This is the maturity date of a bond or other form of securitised debt, or the exercise date/maturity date of a derivative contract. Where the derivative type is spread bet on an equity option or contract for difference on an equity option, the expiry of the option must be indicated.
Note 4	This is the harmonised description of the derivative type (e.g. option, future, contract for difference, complex derivative, warrant, spread bet, credit default swap or other swap).
Note 5	This is only relevant when the instrument is an option, warrant, spread bet on an equity option or contract for difference on an equity option. Where the instrument is a spread bet on an equity option or a contract for difference on an equity option this field should be used to indicate the put/call status of the equity option.
Note 6	This is only relevant when the instrument is an option, warrant, spread bet on an equity option or contract for difference on an equity option. Where the instrument is a spread bet on an equity option or a contract for difference on an equity option this field should be used to indicate the strike price of the equity option.

	General	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
Note 7	This is the number of units of the instrument in question which are contained in a trading lot; for example, the number of derivatives or securities represented by one contract.		
Note 8	This should be used to indicate whether the quantity is the number of units of the instrument, the nominal value of bonds, or the number of derivative contracts.		
Note 9	This should be the unique identification number for the transaction provided by the *firm*.		
Note 10	This is the identity of the *client* or customer on whose behalf the *firm* was acting.		

Information to be included in a periodic report

This annex forms part of ■ COBS 16.3.1 R.

	Periodic information (all cases)	
1.	the name of the *firm;*	
2.	the name or other designation of the *retail client*'s account;	
3.	a statement of the contents and the valuation of the portfolio, including details of:	
	(a)	each *designated investment* held, its market value or fair value if market value is unavailable;
	(b)	the cash balance at the beginning and at the end of the reporting period; and
	(c)	the performance of the portfolio during the reporting period;
4.	the total amount of *fees* and charges incurred during the reporting period, itemising at least total management *fees* and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;	
5.	a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the *firm* and the *client*;	
6.	the total amount of dividends, interest and other payments received during the reporting period in relation to the *client*'s portfolio; and	
7.	information about other corporate actions giving rights in relation to *designated investments* held in the portfolio.	

Chapter 16A

Reporting information to clients (MiFID and insurance-based investment products provisions)

16A.1 Application

16A.1.1 R This chapter applies to a *firm* in relation to:

(1) its *MiFID, equivalent third country or optional exemption business*; and

(2) carrying on *insurance distribution activities* relating to an *insurance-based investment product*.

Effect of provisions marked "UK" for third country investment firms and MiFID optional exemption firms

16A.1.2 R Provisions in this chapter marked "UK" and including a Note (**'Note:'**) referring to the *MiFID Org Regulation* apply in relation to *MiFID optional exemption business* as if they were *rules* (see ■ COBS 1.2.2G).

16A.1.2A G The effect of ■ GEN 2.2.22AR is that provisions in this chapter marked "UK" also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

Effect of provisions marked "UK" for firms distributing insurance-based investment products

16A.1.3 R Provisions in this chapter marked "UK" and including a Note (**'Note:'**) referring to the *IDD Regulation* apply as if they were *rules* to *firms* to whom the *IDD Regulation* does not apply, when doing *insurance distribution*.

16A.2 General client reporting and record keeping requirements

16A.2.1 R

(1) A *firm* must provide a *client* with adequate reports on the service provided in a *durable medium*.

(2) The reports must include:

(a) periodic communications to the *client*, taking into account the type and the complexity of the *financial instruments* or *insurance-based investment products* involved and the nature of the service provided to the *client*; and

(b) where applicable, the costs associated with the transactions and services undertaken on behalf of the *client*.

[**Note:** article 25(6) of *MIFID*, article 30(5) of the *IDD*]

16A.2.2 G

A *firm* should refer to SYSC 3.2 (for *insurers* and *managing agents*) and SYSC 9 (for other *firms*) for the requirements that apply in relation to the retention of records.

16A.3 Occasional reporting: MiFID business

Execution of orders other than when undertaking portfolio management

16A.3.1 UK 59(1) Investment firms having carried out an order on behalf of a retail client or a professional client, other than for portfolio management, shall, in respect of that order:

(a) promptly provide the retail client or professional client, as applicable, in a durable medium, with the essential information concerning the execution of that order;

(b) send a notice to a retail client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person.

Points (a) and (b) shall not apply where orders executed on behalf of clients relate to bonds funding mortgage loan agreements with the said clients, in which case the report on the transaction shall be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.

59(2) In addition to the requirements under paragraph 1, investment firms shall supply the client, on request, with information about the status of his order.

59(3) In the case of retail client orders relating to units or shares in a collective investment undertaking which are executed periodically, investment firms shall either take the action specified in point (b) of paragraph 1 or provide the retail client, at least once every six months, with the information listed in paragraph 4 in respect of those transactions.

59(4) The notice referred to in point (b) of paragraph 1 shall include such of the following information as is applicable and, where relevant, in accordance with the regulatory technical standards on reporting obligations adopted in accordance with Article 26 of Regulation (EU) No 600/2014:

(a) the reporting firm identification;

(b) the name or other designation of the retail client;

(c) the trading day;

(d) the trading time;

(e) the type of the order;

(f) the venue identification;

(g) the instrument identification;

(h) the buy/sell indicator;

(i) the nature of the order if other than buy/sell;

(j) the quantity;

(k) the unit price;

(l) the total consideration;

(m) a total sum of the commissions and expenses charged and, where the retail client so requests, an itemised breakdown including, where relevant, the amount of any mark-up or mark-down imposed where the transaction was executed by an investment firm when dealing on own account, and the investment firm owes a duty of best execution to the retail client;

(n) the rate of exchange obtained where the transaction involves a conversion of currency;

(o) the retail client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the retail client;

(p) where the retail client's counterparty was the investment firm itself or any person in the investment firm's group or another retail client of the investment firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of point (k), where the order is executed in tranches, the investment firm may supply the retail client with information about the price of each tranche or the average price. Where the average price is provided, the investment firm shall supply the retail client with information about the price of each tranche upon request.

59(5) The investment firm may provide the retail client with the information referred to in paragraph 4 using standard codes if it also provides an explanation of the codes used.

[**Note:** article 59 of the *MiFID Org Regulation*]

16A.3.2 G In determining what is essential information, a *firm* should consider including:

(1) for transactions in a *derivative*:

(a) the maturity, delivery or expiry date of the *derivative*;

(b) in the case of an *option*, a reference to the last exercise date, whether it can be exercised before maturity and the strike price; and

(c) if the transaction *closes out* an open *futures* position, all essential details required in respect of each contract comprised in the open position and each contract by which it was *closed out* and the profit or loss to the *client* arising out of *closing out* that position (a difference account);

(2) for the exercise of an *option*:

(a) the date of exercise, and either the time of exercise or that the *client* will be notified of that time on request;

(b) whether the exercise creates a sale or purchase in the underlying asset; and

(c) the strike price of the *option* (for a currency *option*, the rate of exchange will be the same as the strike price) and, if applicable, the total consideration from or to the *client*; and

(3) the fact that the transaction involves any dividend or capitalisation or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the *investment*, and under the terms of the transaction the benefit of which will not pass to the purchaser.

Guidance on the requirements

16A.3.3 G Where a *firm* executes an order in tranches, the *firm* may, where appropriate, indicate the trading time and the execution venue in a way that is consistent with this, such as, "multiple". In accordance with the *client's best interests rule*, a *firm* should provide additional information at the *client's* request.

16A.3.4 G In accordance with ■ COBS 2.4.9R, a *firm* may dispatch confirmation to an agent, other than the *firm* or an associate of the *firm*, nominated by the *client* in writing.

Reporting obligations in respect of eligible counterparties

16A.3.5 UK 61 The requirements in articles 46 to 51 and 59 do not apply to services provided to eligible counterparties.

[**Note:** article 61 of the *MiFID Org Regulation*]

16A.4 Periodic reporting

Provision by a firm and contents: MiFID business

16A.4.1 UK

60(1) Investments firms which provide the service of portfolio management to retail clients or professional clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.

60(2) The periodic statement required under paragraph 1 shall provide a fair and balanced review of the activities undertaken and of the performance of the portfolio during the reporting period and shall include, where relevant, the following information to retail clients:

(a) the name of the investment firm;

(b) the name or other designation of the client's account;

(c) a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;

(d) the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;

(e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the investment firm and the client;

(f) the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;

(g) information about other corporate actions giving rights in relation to financial instruments held in the portfolio;

(h) for each transaction executed during the period, the information referred to in Article 59(4)(c) to (l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case paragraph 4 of this Article shall apply.

60(3) The periodic statement referred to in paragraph 1 shall be provided to retail clients once every three months, except in the following cases:

(a) where the investment firm provides its retail clients with access to an online system, which qualifies as a durable medium, where up-to-date valuations of the client's portfolio can be accessed and where the client can easily access the information required by Article 63(2) and the firm has evidence that the client has accessed a valuation of their portfolio at least once during the relevant quarter;

(b) in cases where paragraph 4 applies, the periodic statement must be provided at least once every 12 months;

(c) where the agreement between an investment firm and a retail client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

The exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order.

60(4) Investment firms, in cases where the retail client elects to receive information about executed transactions on a transaction-by-transaction basis, shall provide promptly to the retail client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.

The investment firm shall send the retail client a notice confirming the transaction and containing the information referred to in Article 59(4) no later than the first business day following that execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

The second subparagraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

[**Note:** article 60 of the *MiFID Org Regulation*]

16A.4.2 G In accordance with ■ COBS 2.4.9R, a *firm* may dispatch a *periodic statement* (as required by article 60(1) of the *MiFID Org Regulation*, see ■ COBS 16A.4.1UK) to an agent, other than the *firm* or an associate of the *firm*, nominated by the *client* in writing.

Provision by a firm and contents: insurance-based investment products

16A.4.2A UK 18(1)Without prejudice to [■ COBS 13.1.2R, ■ COBS 13.3.2R, ■ COBS 14.2.11R, ■ COBS 14.2.5R, ■ COBS 14.2.7R, ■ COBS 16.6.3R, ■ COBS 16.6.3AR and ■ COBS 20.4.7R, and ■ COBS 13 Annexes 1and 2], the insurance intermediary or insurance undertaking shall provide the customer with a periodic report, on a durable medium, of the services provided to and transactions undertaken on behalf of the customer.

18(2)The periodic report required under paragraph 1 shall provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that customer during the reporting period and shall include, where relevant, the total costs associated with these services and transactions, and the value of each underlying investment asset.

18(3)The periodic report required under paragraph 1 shall be provided at least annually.

[**Note:** article 18 of the *IDD Regulation*]

Additional reporting obligations for portfolio management or contingent liability transactions

16A.4.3 UK

62(1) Investment firms providing the service of portfolio management to a retail client must inform the client where the overall value of the portfolio, as evaluated at the beginning of each reporting period, depreciates by 10% and thereafter at multiples of 10%, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

62(2) Investment firms that hold a retail client account that includes positions in leveraged financial instruments or contingent liability transactions shall inform the client, where the initial value of each instrument depreciates by 10% and thereafter at multiples of 10%. Reporting under this paragraph should be on an instrument-by-instrument basis, unless otherwise agreed with the client, and shall take place no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

[**Note:** article 62 of the *MiFID Org Regulation*]

16A.4.4 G

For the purposes of this section, a contingent liability transaction should be understood as being a transaction that involves any actual or potential liability for the client that exceeds the cost of acquiring the instrument.

[**Note:** recital 96 to the *MiFID Org Regulation*]

Guidance on contingent liability transactions

16A.4.5 G

When providing a *periodic statement* to a *retail client*, a *firm* should consider whether to include:

(1) the *collateral* value in respect of any contingent liability transaction in the *client's* portfolio during the relevant period; and

(2) *option* account valuations in respect of each open *option* written by the *client* in the *client's* portfolio at the end of the relevant period; stating:

(a) the *share*, *future*, index or other *investment* involved;

(b) the trade price and date for the opening transaction, unless the valuation statement follows the statement for the period in which the option was opened;

(c) the market price of the contract; and

(d) the exercise price of the contract.

(3) *Option* account valuations may show an average trade price and market price in respect of an *option* series if the *client* buys a number of contracts within the same series.

16A.5 Statements of client financial instruments or client funds

16A.5.1 UK

63(1) Investment firms that hold client financial instruments or client funds shall send at least on a quarterly basis, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement. Upon client request, firms shall provide such statement more frequently at a commercial cost.

The first subparagraph shall not apply to a credit institution that is a CRR firm as defined in Article 4(1)(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms in respect of deposits within the meaning of Article 2(1)(23A) of Regulation (EU) No 600/2014 held by that institution.

63(2) The statement of client assets referred to in paragraph 1 shall include the following information:

(a) details of all the financial instruments or funds held by the investment firm for the client at the end of the period covered by the statement;

(b) the extent to which any client financial instruments or client funds have been the subject of securities financing transactions;

(c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued;

(d) a clear indication of the assets or funds which are subject to the rules of the UK law on markets in financial instruments and those that are not, such as those that are subject to Title Transfer Collateral Agreement;

(e) a clear indication of which assets are affected by some peculiarities in their ownership status, for instance due to a security interest;

(f) the market or estimated value, when the market value is not available, of the financial instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity. The evaluation of the estimated value shall be performed by the firm on a best effort basis.

In cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in point (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

The periodic statement of client assets referred to in paragraph 1 shall not be provided where the investment firm provides its clients with access to an online system, which qualifies as a durable medium, where up-to-date statements of client's financial instruments or funds can be easily accessed by the client and the firm has evidence that the client has accessed this statement at least once during the relevant quarter.

63(3) Investment firms which hold financial instruments or funds and which carry out the service of portfolio management for a client may include the statement of client assets referred to in paragraph 1 in the periodic statement it provides to that client pursuant to Article 60(1).

[**Note:** article 63 of the *MiFID Org Regulation*]

16A.5.2 G *Firms* subject to either or both the *custody chapter* and the *client money* chapter are reminded of the reporting obligations to clients in ■ CASS 9.2 (Prime broker's daily report to clients) and ■ CASS 9.5 (Reporting to clients on request).

Chapter 17

Claims handling for long-term care insurance

17.1 Providing information to claimants, dealing with claims and warranties in policies

17.1.1 R When an *insurer* or *managing agent* receives a claim under a *long-term care insurance contract*, it must respond promptly by providing the *policyholder*, or the *person* acting on the *policyholder's* behalf, with:

(1) a claim form (if it requires one to be completed);

(2) a summary of its claims handling procedure; and

(3) appropriate information about the medical criteria that must be met, and any waiting periods that apply, under the terms of the *policy*.

Responding to a claim

17.1.2 R As soon as reasonably practicable after receipt of a claim, the *insurer* or *managing agent* must tell the *policyholder*, or the *person* acting on the *policyholder's* behalf:

(1) (for each part of the claim it accepts), whether the claim will be settled by paying the *policyholder*, providing goods or services to the *policyholder* or paying another *person* to provide those goods or services; and

(2) (for each part of the claim it rejects), why the claim has been rejected and whether any future rights to claim exist.

Rejecting a claim

17.1.3 R An *insurer* and a *managing agent* must not unreasonably reject a claim.

Cases where rejection of consumer's claim is unreasonable: contracts or variations before 1 August 2017

17.1.4 R For contracts entered into or variations agreed before 1 August 2017, except where there is evidence of fraud, an *insurer* and a *managing agent* must not reject a claim for:

(1) (in relation to contracts entered into or variations agreed on or before 5 April 2013) non-disclosure of a fact material to the risk which the *policyholder* could not reasonably have been expected to disclose; or

(2) misrepresentation of a fact material to the risk, unless the misrepresentation is negligent; or

(3) breach of warranty, unless the circumstances of the claim are connected to the breach, the warranty is material to the risk and was drawn to the *policyholder's* attention before the conclusion of the contract.

Cases where rejection of consumer's claim is unreasonable: contracts or variations on or after 1 August 2017

17.1.5 G

(1) Cases in which rejection of a *consumer's* claim would be unreasonable (in the *FCA's* view) include, but are not limited to rejection:

(a) for misrepresentation, unless it is a "qualifying misrepresentation" in ■ ICOBS 8.1.3R;

(b) where the claim is subject to the Insurance Act 2015, for breach of warranty or term, or for fraud, unless the *insurer* is able to rely on the relevant provisions of the Insurance Act 2015; and

(c) where the *policy* is drafted or operated in a way that does not allow the *insurer* to reject.

(2) The Insurance Act 2015 sets out a number of situations in which an *insurer* may have no liability or obligation to pay. For example:

(a) section 10 provides situations in which an *insurer* has no liability under a *policy* due to a breach of warranty;

(b) section 11 places restrictions on an *insurer's* ability to reject a claim for breach of a term where compliance is aimed at reducing certain types of risk; and

(c) sections 12 and 13 provide for the extent to which a *firm* is entitled to reject fraudulent claims.

17.1.6 R

For contracts entered into or variations agreed on or after 1 August 2017, a rejection of a *consumer policyholder's* claim for breach of a condition or warranty (that is not subject to and within section 10 or 11 the Insurance Act 2015) is unreasonable unless the circumstances of the claim are connected to the breach.

17.1.7 R

An *insurer* must ensure that any condition or warranty included in a *long-term care insurance contract* with a *consumer*:

(1) has operative effect only in relation to the types of crystallised risk covered by the *policy* that are connected to that condition or warranty; and

(2) is material to the risks to which it relates and is drawn to the *customer's* attention before the conclusion of the contract.

Chapter 18

Specialist Regimes

18.1 Trustee Firms

Application

18.1.1 R

(1) This section applies to the *MiFID, equivalent third country or optional exemption business* carried on by a *trustee firm*.

(2) It does not apply to a *trustee firm* when acting as:

(a) a *depositary*; or

(b) the trustee of a *personal pension scheme* or *stakeholder pension scheme*.

Application of COBS to trustee firms

18.1.2 R

The provisions of *COBS* in the table do not apply to a *trustee firm* to which this section applies:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
6.4	Disclosure of charges, remuneration and commission
9.6	Special rules for providing basic advice on a stakeholder product
16A.4.5	Guidance on contingent liability transactions

18.1.2A G

This section applies to the *MiFID, equivalent third country or optional exemption business* carried on by a *trustee firm*. As such, the list in ■ COBS 18.1.2R above does not include any provisions in *COBS* which do not apply to *MiFID, equivalent third country or optional exemption business*.

18.1.3 G

The provisions of *COBS* in the table are unlikely to be relevant in relation to a *trustee firm* to which this section applies:

COBS	Description
5	Distance communications
13	Preparing product information
14.2	Providing product information
15	Cancellation
17	Claims handling for long-term care insurance
18.2	Energy market activity and oil market activity
18.3	Corporate finance business
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

Duties of trustee firms under the general law

18.1.4 G To the extent a *rule* in *COBS* applies to a *trustee firm*, that *rule*:

(1) applies in addition to any duties or powers imposed or conferred upon a trustee by the general law; and

(2) does not qualify or restrict the duties or powers that the general law imposes or confers upon a trustee; *trustee firms* will be under a duty to observe the provisions of their trust instrument; if its provisions conflict with any applicable *rule*, *trustee firms* will need to take advice in resolving the conflict.

Considering and complying with applicable COBS rules

18.1.5 G In considering and reaching decisions as to how applicable rules in *COBS* apply in the context of a particular trust arrangement, a *trustee firm* should consider the nature of that arrangement and the provisions of the relevant trust instrument.

References to "client" in applicable COBS rules

18.1.6 G Where an applicable *rule* in *COBS* requires the doing of any thing in relation to a *client*, the *trustee firm* should consider who, in the context of that *rule* and having regard to the particular trust arrangement, is the most appropriate person to treat as its *client*. This might, for example, be the beneficiary, another trustee or the trust, depending on the particular circumstances.

18.2 Energy market activity and oil market activity

Energy market activity and oil market activity - MiFID business

18.2.1 R The provisions of *COBS* in the table do not apply in relation to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID or equivalent third country business*:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
16.3.9	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

18.2.2 G The provisions of *COBS* in the table are unlikely to be relevant to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID or equivalent third country business*:

COBS	Description
5	Distance communications
7	Insurance distribution
13	Preparing product information
14.2	Providing product information to clients

COBS	Description
15	Cancellation
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime
18.3	Corporate finance business
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

Energy market activity and oil market activity - non-MiFID business

18.2.3 R Only the *COBS* provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not:

(1) *MiFID or equivalent third country business*; or

(2) *energy market activity* or *oil market activity* set out in ■ COBS 18.2.4 R.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, but only in relation to *communicating* or *approving* a *financial promotion*
5.2	E-commerce
12	Investment research and non-independent research
16.2	Occasional reporting

Energy market activity and oil market activity - dealings with or through authorised persons

18.2.4 R Only the *COBS* provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not *MiFID or equivalent third country business* but which, if the *firm* were not *authorised*, would not be a *regulated activity* because of article 16 of the *Regulated Activities Order* (Dealing in contractually based investments) or article 22 of the *Regulated Activities Order* (Deals with or through authorised persons etc.).

COBS	Description
1	Application
2.4	Agent as client and reliance on others
4.12	Unregulated collective investment schemes
5.2	E-commerce

Other non-MiFID business related to commodity or exotic derivative instruments

18.2.5 R *COBS* applies as set out in the table to *firms* in respect of activities referred to in the *general application rule* related to:

(1) *commodity futures*; or

(2) *commodity options*; or

(3) *contracts for differences* related to an underlying *commodity*; or

(4) other *futures* or *contracts for differences* which are not related to *commodities*, financial instruments or cash;

which is not *MiFID or equivalent third country business* and *energy market activity* or *oil market activity*.

Application of COBS to other non-MiFID business related to commodity derivative instruments
All of *COBS* applies, except COBS 18.2.6 R to COBS 18.2.9 E applies instead of COBS 11.2 (Best execution)

Best execution for other non-MIFID business related to commodity and exotic derivative instruments

18.2.6 R A *firm* that *executes* a *customer order* in the course of carrying out activities referred to in ■ COBS 18.2.5 R must provide best execution.

Exceptions to best execution

18.2.7 R The duty to provide best execution does not apply where:

(1) the *firm* has agreed with a *professional client* that it does not owe a duty of best execution to him; or

(2) the *firm* relies on another *person* to whom it passes a *customer order* for *execution* to provide best execution, but only if it has taken reasonable care to ensure that he will do so.

Providing best execution

18.2.8 R To provide best execution, a *firm* must:

(1) take reasonable care to ascertain the price which is the best available for the *customer order* in the relevant market at the time for transactions of the kind and size concerned; and

(2) *execute* the *customer order* at a price which is no less advantageous to the *customer*, unless the *firm* has taken reasonable steps to ensure that it would be in the *customer's* best interests not to do so.

18.2.9 E (1) In order to take reasonable care to ascertain the price which is the best available, a *firm*:

(a) should disregard any *charges* and *commission* made by it or its agents that are disclosed to the *customer* under ■ COBS 6.1.9 R (Information about costs and associated charges);

(b) need not have access to competing exchanges, or to all, or a minimum number of, available price sources; but if a *firm* can access prices displayed by different exchanges and trading platforms and make a direct and immediate comparison, it should *execute* the *customer order* at the best price available to the firm on such exchanges or trading platforms, if this is in the best interests of the *customer*;

(c) should pass on to the *customer* the price at which it *executes* the transaction to meet the *customer order*; and

(d) should not take a *mark-up or mark-down* from the price at which it *executes* the *customer order*.

(2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))

(3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))

18.3 Corporate finance business

Corporate finance business - MiFID business

18.3.1 R The provisions of *COBS* in the table do not apply in respect of any *corporate finance business* carried on by a *firm* which is *MiFID or equivalent third country business*:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
COBS 16.3.7	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

18.3.2 G The provisions of *COBS* in the table are unlikely to be relevant to any *corporate finance business* carried on by a *firm* which is *MiFID or equivalent third country business*:

COBS	Description
5	Distance communications, except in relation to *distance contracts* concluded with *consumers*
7	Insurance distribution

13	Preparing product information
14.2	Providing product information
15	Cancellation, except cancellation and withdrawal rights in relation to *distance contracts* concluded with *consumers*
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime
18.2	Energy market activity and oil market activity
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

Corporate finance business - non-MiFID business

18.3.3 R Only the provisions of *COBS* in the table apply to *corporate finance business* carried on by a *firm* which is not *MiFID or equivalent third country business* or *MIFID optional exemption business*.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.3A	Inducements
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, except COBS 4.5 - COBS 4.11
5.1	The information and other requirements of the Distance Marketing Directive, but only in relation to *distance contracts* concluded with *consumers*
5.2	E-commerce
11.7A	Personal account dealing
11A.2	Prohibition of future service restrictions
12	Investment research and non-independent research
15	Cancellation, but only in relation to *distance contracts* concluded with *consumers*

Corporate finance business – optionally exempt business

18.3.3A R Only the provisions of *COBS* in the table apply to *corporate finance business* which is *MiFID optional exemption business*.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.2A	Information disclosures before providing services
2.3A	Inducements
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, except COBS 4.5-COBS 4.6 and COBS 4.8 - COBS 4.11
5.1	The information and other requirements of the Distance Marketing Directive, but only in relation to distance contracts concluded with consumers
5.2	E-commerce
6.1A	Information about the firm, its services and remuneration
6.2B	Describing advice services
8A	Client agreements
9A	Suitability
11.7A	Personal account dealing
12	Investment research
14.3.1A	Information about financial instruments
15	Cancellation, but only in relation to distance contracts concluded with consumers
16A	Reporting information to clients

18.3.4 G ■ COBS 15 (Cancellation) is likely to be of limited application to *corporate finance business*. *Distance contracts* concluded with *consumers* in the course of *corporate finance business* will be exempt from ■ COBS 15 if the price of the financial service is dependent on fluctuations in the financial market outside the *firm's* control.

18.4 Stock lending activity

18.4.1 R The provisions of *COBS* in the table do not apply in relation to any *stock lending activity* carried on by a *firm*:

COBS	Subject
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
COBS 16A.4.5	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

18.4.2 G The provisions of *COBS* in the table are unlikely to be relevant in relation to any *stock lending activity* carried on by a *firm*:

COBS	Description
5	Distance communications, except in relation to *distance contracts* concluded with *consumers*
7	Insurance distribution
13	Preparing product information
14.2	Providing product information
15	Cancellation, except cancellation and withdrawal rights in relation to *distance contracts* concluded with *consumers*
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime

18.2	Energy market activity and oil market activity
19	Pensions - supplementary provisions
20	With-profits

18.5 Residual CIS operators and small authorised UK AIFMs

Application

18.5.1 R Subject to ■ COBS 18.5.1A R, this section applies to a *firm* which is:

(1) [deleted]

(2) [deleted]

(3) a *small authorised UK AIFM*; or

(4) a *residual CIS operator*.

(5) [deleted]

18.5.1A R ■ COBS 18.5.3 R (2) and ■ COBS 18.5.5 R to ■ COBS 18.5.18 E do not apply to a *small authorised UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme*.

18.5.1B R [deleted]

Application or modification of general COBS rules

18.5.2 R A *firm* when it is carrying on *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*:

(1) must comply with the *COBS rules* specified in the table, as modified by this section; and

(2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Small authorised UK AIFM and a residual CIS operator
1 (Application)	Applies
2.1.1R (The client's best interests rule)	Applies
2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)	Applies
2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1

2.4 (Agent as client and reliance on others)	Applies
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies
5.2 (E-commerce)	Applies
11.2 (Best execution for AIFMs and residual CIS operators)	Applies to a *small authorised UK AIFM* of an *authorised AIF*. Applies (as modified by COBS 18.5.4R) to a *small authorised UK AIFM* of an *unauthorised AIF* or *residual CIS operator*.
11.3 (Client order handling)	Applies
16.3 (Periodic reporting)	Applies to a *small authorised UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme*, as modified by COBS 18.5.4BR. Otherwise does not apply.
18.5 (Residual CIS operators and small authorised UK AIFMs)	Applies
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies (subject to COBS 18.5.3CR)
18 Annex 2 (Record keeping: client orders and transactions)	Applies

18.5.2-A G [deleted]

18.5.2-B G

(1) For activities which are not *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*, the *COBS rules* apply under the general application rule, as modified in ■ COBS 1 Annex 1.

(2) This may include, for example, activities relating to the administration of the *fund* and *marketing*.

18.5.2A R [deleted]

General modifications

18.5.3 R Where *COBS rules* specified in the table in ■ COBS 18.5.2 R apply to a *firm* carrying on *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*, the following modifications apply:

(1) subject to (2), references to *customer* or *client* are to be construed as references to any *fund*for which the *firm* is acting or intends to act;

(2) in the case of a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator*, when a *firm* is required by the *rules* in *COBS* to provide information to, or obtain consent from, a *customer* or *client*, the *firm* must ensure that the information is provided to, or consent obtained from, an investor or a potential investor in the *fund* as the case may be; and

(3) references to the service of *portfolio management* in ■ COBS 11.2 (Best execution for AIFMs and residual CIS operators) and ■ 11.3 (Client order handling) are to be readas references to the management by a *firm* of *financial instruments* held for or within the*fund*.

(4) [deleted]

18.5.3A G

(1) ■ COBS 1.2 (Markets in Financial Instruments Directive) contains modifications to the text of the *MiFID Org Regulation* where this is applied as *rules* to *firms* that are not subject to those provisions directly.

(2) These modifications apply to ■ COBS 11.3 (Client order handling), which is applied in the table at ■ COBS 18.5.2R.

Research and inducements

18.5.3B R

Subject to ■ COBS 18.5.3CR, a *firm* must comply with ■ COBS 18 Annex 1 (Research and inducements for collective portfolio managers) when executing orders, or placing orders with other entities for *execution*, that relate to *financial instruments* for, or on behalf of, the *fund*.

18.5.3C R

■ COBS 18 Annex 1 does not apply in relation to an *AIF* or *CIS* which in accordance with its core investment policy:

(1) does not generally invest in *financial instruments* that can be:

(a) registered in a *financial instruments* account opened in the books of a *depositary*; or

(b) physically delivered to the *depositary*; or

(2) generally invests in *issuers* or *non-listed companies* to potentially acquire *control* over such companies, either individually or jointly with other *funds*.

Modification of best execution

18.5.4 R

The best execution provisions in ■ COBS 11.2 (Best execution for AIFMs and residual CIS operators) do not apply to a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* of a *fund* whose *fund* documents include a statement that best execution does not apply in relation to the *fund* and in which:

(1) no investor is a *retail client*; or

(2) no current investor in the *fund* was a *retail client* when it invested in the *fund*.

18.5.4A R

[deleted]

Modification of periodic reporting requirements

18.5.4B R

A *small authorised UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme* must comply with ■ COBS 16.3 (Periodic reporting) with

references to *managing investments* to be construed as providing *AIFM investment management functions*.

18.5.4C R [deleted]

18.5.4D G [deleted]

Scheme documents for an unauthorised fund

18.5.5 R A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* must not accept a *retail client* as an investor in the *fund* unless it has taken reasonable steps to offer and, if requested, provide to the potential investor, fund documents which adequately describe how the*fund* is governed.

Prohibition on issue of bearer units

18.5.5-A G The effect of section 241A of the *Act* is that no bearer *units* in a *collective investment scheme* may be issued, converted or cancelled from 1 January 2021. However, the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346) contain transitional provisions for the conversion of bearer *units* to registered *units* and the cancellation of bearer *units* on or before 1 January 2022.

Distance marketing

18.5.5A G *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK*, ■ COBS 5.1 applies specific requirements for that activity.

Format and content of fund documents

18.5.6 G The fund documents required under ■ COBS 18.5.5 R may consist of any number of *documents* provided that it is clear that collectively they constitute the fund documents and provided the use of several *documents* in no way diminishes the significance of any of the statements which are required to be given to the potential investor.

18.5.6A G Where a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* is required to publish a *key information document*, only information that is additional to that contained in the *key information document* needs be disclosed under ■ COBS 18.5.5R.

18.5.7 G The fund documents of an *unauthorised fund* managed by a *small authorised UK AIFM* or a *residual CIS operator* (if those fund documents exist) should make it clear that if an investor is reclassified as a *retail client*, this reclassification will not affect certain activities of the *firm*. In particular, despite such a reclassification, the *firm* will not be required to comply with the best execution provisions. It should be noted that there is no requirement that fund documents must be produced by a *small authorised UK AIFM* of an *unauthorised fund* or a *residual CIS operator* unless they are required to prepare a *key information document* under the *PRIIPs Regulation*.

18.5.8 R Where the *fund* is an *unauthorised fund* managed by a *small authorised UK AIFM* or a *residual CIS operator* and no current investor in the *fund* was a *retail client* when it invested in the *fund*, the fund documents must include a statement that:

(1) explains that if an investor is reclassified as a *retail client* subsequent to investing in the *fund*, then the *firm* may continue to treat all investors in the *fund* as though they were not *retail clients*;

(2) explains that if an investor is reclassified as a *retail client* subsequent to investing in the *fund*, then the modification of best execution (see ■ COBS 18.5.4 R) will continue to apply to that fund; and

(3) explains that, in the event of such a reclassification, the *firm* will not be required to provide best execution in relation to the *fund*.

18.5.9 G A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* will still have to comply with other *COBS* provisions as a result of the reclassification of an investor as a *retail client*. For example, the *firm* must provide *periodic statements* to investors who are *retail clients* in an *unauthorised fund* (see the rule on periodic statements for an unauthorised fund (■ COBS 18.5.11 R)).

Adequate information

18.5.10 E (1) In order to provide adequate information to describe how the *fund* is governed, a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* should include in the fund documents a provision about each of the items of relevant information set out in the following table (Content of fund documents).

(2) Compliance with (1) may be relied on as tending to establish compliance with ■ COBS 18.5.5 R.

(3) Contravention of (1) may be relied on as tending to establish contravention of ■ COBS 18.5.5 R.

Table: Content of fund documents

The*fund* documents should include provision about:		
(1)	Regulator	
	The *firm* statutory status in accordance with GEN 4 Annex 1 R (Statutory status disclosure);	
(2)	Services	
	the nature of the services that the *firm* will provide;	
(3)	Payments for services	
	details of any payment for services payable by the *fund* or from the property of the fund or investors in the *fund* to the *firm*, including where appropriate:	
	(a)	the basis of calculation;
	(b)	how it is to be paid and collected;
	(c)	how frequently it is to be paid; and
	(d)	whether or not any other payment is receivable by the *firm* (or to its knowledge by any of its *associates*) in connection with any transactions effected

The*fund* documents should include provision about:

by the *firm* with or for the *fund*, in addition to or in lieu of any fees;

(4) Commencement

when and how the *firm* is appointed;

(5) Accounting

the arrangements for accounting to the *fund* or investors in the *fund* for any transaction effected;

(6) Termination method

how the appointment of the *firm* may be terminated;

(7) Complaints procedure

how to complain to the *firm* and a statement that the investors in the *fund* may subsequently complain direct to the *Financial Ombudsman Service*;

(8) Compensation

whether or not compensation may be available from the *compensation scheme* should the *firm* be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable compensation scheme, the extent and level of cover and how further information can be obtained;

(9) Investment objectives

the investment objectives for the portfolio of the *fund*;

(10) Restrictions

(a) any restrictions on:

(i) the types of *investments* or property which may be included in the portfolio of the *fund*;

(ii) the markets on which *investments* or property may be acquired for the portfolio of the *fund*;

(iii) the amount or value of any one *investment* or asset, or on the proportion of the portfolio of the *fund* which any one *investment* or asset or any particular kind of *investment* or asset may constitute; or

(b) that there are no such restrictions;

(11) Holding fund assets

(a) if it is the case, that the *firm* will:

(i) hold *money* on behalf of the *fund* or be the *custodian* of *investments* or other property of the *fund*; or

(ii) arrange for some other *person* to act in either capacity and, if so, whether that *person* is an associate of the *firm* identifying that *person* and describing the nature of any association; and

(b) in either case:

(i) how any *money* is to be deposited;

The*fund* documents should include provision about:

(ii) the arrangements for recording and separately identifying registrable *investments* of the *fund* and, where the registered holder is the *firm's* own nominee, that the *firm* will be responsible for the acts and omissions of that *person*;

(iii) the extent to which the *firm* accepts liability for any loss of the *investment* of the *fund*;

(iv) the extent to which the *firm* or any other *person* mentioned in (11)(a)(ii), may hold a lien or security interest over *investments* of the *fund*;

(v) where *investments* of the *fund* will be registered collectively in the same name, a statement that the entitlements of the *fund* may not be identifiable by separate certificates or other physical documents of title, and that, should the *firm* default, any shortfall in *investments* of the *fund* registered in that name may be shared proportionately among all *fund* and any other *customers* of the *firm* whose *investments* are so registered;

(vi) whether or not *investments* or other property of the *fund* can be lent to, or deposited by way of collateral with, a third party and whether or not *money* can be borrowed on behalf of the *fund* against the security of those *investments* or property and, if so, the terms upon which they may be lent or deposited;

(vii) the arrangements for accounting to the *fund* for *investments* of the *fund*, for income received (including any interest on *money* and any income earned by lending *investments* or other property) of the *fund*, and for rights conferred in respect of *investments* or other property of the *fund*;

(viii) the arrangements for determining the exercise of any voting rights conferred by *investments* of the *fund*; and

(ix) where *investments* of the *fund* may be held by an eligible *custodian* outside the *United Kingdom*, a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those *investments*, may apply;

(12) Clients' money outside the United Kingdom

if it is the case, that the *firm* may hold the *money* of the *fund* in a *client bank account* outside the *United Kingdom*;

The*fund* documents should include provision about:

(13) Exchange rates

if a liability of the *fund* in one currency is to be matched by an asset in a different currency, or if the services to be provided to the *firm* for the *fund* may relate to an *investment* denominated in a currency other than the currency in which the *investments* of the *fund* are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the *investments* of the *fund*;

(14) Stabilised investments

if it is the case, that the *firm* is to have the right under the *fund documents* to effect transactions in *investments* the prices of which may be the subject of stabilisation;

(15) Conflict of interest and material interest

if it is the case, that the *firm* is to have the right under the agreement or *instrument constituting the fund* to effect transactions on behalf of the *fund* in which the *firm* has directly or indirectly a material interest (except for an interest arising solely from the investment of the *firm* as agent for the *fund*), or a relationship of any description with another party which may involve a conflict with the *firm* duty to the *fund*, together with a disclosure of the nature of the interest or relationship;

(16) Research and inducements

how the firm intends to pay for research. For example, whether the firm proposes to pay for research directly or to use a research payment account;

(17) Acting as principal

if it is the case, that the *firm* may act as *principal* in a transaction with the *fund*;

(18) Stock lending

if it is the case, that the *firm* may undertake *stock lending activity* with or for the *fund* specifying the type of assets of the *fund* to be lent, the type and value of *relevant collateral* from the borrower and the method and amount of payment due to the *fund* in respect of the lending;

(19) Transactions involving contingent liability investments

(a) if it is the case, that the agreement or*instrument constituting the fund* allows the *firm* to effect transactions involving *contingent liability investments* for the account of the portfolio of the *fund*;

(b) if applicable, whether there are any limits on the amount to be committed by way of margin and, if so, what those limits are; and

(c) if applicable, that the *firm* has the authority to effect transactions involving *contingent liability investments* otherwise than under the rules of a *recognised investment exchange* and in a contract traded thereon;

(20) Periodic statements

The*fund* documents should include provision about:

(a) the frequency of any *periodic statement* (this should not be less than once every 12 months) except where a *periodic statement* is not required (see COBS 18.5.13R); and

(b) whether those statements will include some measure of performance, and, if so, what the basis of that measurement will be;

(21) Valuation

the bases on which assets comprised in the portfolio of the *fund* are to be valued;

(22) Borrowings

if it is the case, that the *firm* may supplement the funds in the portfolio of the *fund* and, if it may do so:

(a) the circumstances in which the *firm* may do so;

(b) whether there are any limits on the extent to which the *firm* may do so and, if so, what those limits are; and

(c) any circumstances in which such limits may be exceeded;

(23) Underwriting commitments

if it is the case, that the *firm* may for the account of the portfolio of the *fund* underwrite or sub-underwrite any issue or offer for sale of *securities*, and:

(a) whether there are any restrictions on the categories of *securities* which may be underwritten and, if so, what these restrictions are; and

(b) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;

(24) Investments in other funds

whether or not the portfolio may invest in *fund* either managed or advised by the *firm* or by an *associate* of the *firm* or in a *fund* which is not a *regulated collective investment scheme*;

(25) Investments in securities underwritten by the firm

whether or not the portfolio may contain *securities* of which any issue or offer for sale was underwritten, managed or arranged by the *firm* or by an *associate* of the *firm* during the preceding 12 months.

18.5.10A R [deleted]

18.5.10B G [deleted]

Periodic statements for an unauthorised fund

18.5.11 R A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* must, subject to the exceptions from the requirement to provide a *periodic statement*, provide to investors in the *fund*, promptly and at suitable intervals, a statement in a *durable medium* which contains adequate

information on the value and composition of the portfolio of the *fund* at the beginning and end of the period of the statement.

Promptness, suitable intervals and adequate information

18.5.12 E

(1) A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* should act in accordance with the provisions in the right hand column of the periodic statements table (see ■ COBS 18.5.15E) to fulfil the requirement to prepare and issue *periodic statements* indicated in the left hand column against these provisions.

(2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to prepare and issue *periodic statements*.

(3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to prepare and issue *periodic statements*.

Exceptions from the requirement to provide a periodic statement

18.5.13 R

(1) A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* need not provide a *periodic statement*:

(a) (i) to an investor in the *fund* who is a *retail client* ordinarily resident outside the *United Kingdom*; or

(ii) to an investor in the *fund* who is a *professional client*; if the investor has so requested or the *firm* has taken reasonable steps to establish that the investor does not wish to receive it; or

(b) if it would duplicate a statement to be provided by someone else.

(2) [deleted]

Record keeping requirements

18.5.14 R

A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* must make a copy of any *periodic statement* it has provided in accordance with the requirement to prepare and issue *periodic statements* to investors in the *fund*. The record must be retained for a minimum period of three years.

18.5.15 E

Table: Periodic statements

This table belongs to ■ COBS 18.5.12 E.

Periodic statements		
Suitable intervals	(1)	A *periodic statement* should be provided at least:
		(a) six-monthly; or
		(b) once in any other period, not exceeding 12 months, which has been mutually agreed between the *firm* and the investor in the *fund*.

Periodic statements					
Adequate information	(2)	(a)	A *periodic statement* should contain:		
			(i)	(A)	The information set out in the table of general contents of a *periodic statement*;
				(B)	where the portfolio of the *fund* includes uncovered open positions in *contingent liability investments*, the additional information in the table listing the contents of a *periodic statement* (see COBS 18.5.18 E) in respect of contingent liability investments; or
			(ii)		such information as an investor who is a *retail client* ordinarily resident outside the *United Kingdom*, or a *professional client*, has on his own initiative agreed with the *firm* as adequate.
		(b)	[deleted]		

18.5.16 G Examples of uncovered open positions include:

(1) selling a call *option* on an *investment* not held in the portfolio;

(2) unsettled sales of call *options* on currency in amounts greater than the portfolio's holding of that currency in cash or in *readily realisable investments* denominated in that currency; and

(3) transactions having the effect of *selling* an index to an amount greater than the portfolio's holdings of *investments* included in that index.

18.5.17 E Table: General contents of a periodic statement

This table belongs to ■ COBS 18.5.15 E.

General contents of periodic statements			
1	Contents and value		
	(a)	As at the beginning of the account period, the total value of the portfolio of the *fund*, being either:	
		(i)	the value of the assets comprised in the portfolio on the date as at which the statement provided for the immediately preceding period of account is made up; or
		(ii)	in the case of the first *periodic statement*, the value of the assets comprised in the portfolio on the date on which the *firm* assumed responsibility for the management of the portfolio.
	(b)	As at the end of the account period:	

General contents of periodic statements

(i) the number, description and value of each *investment* held on behalf of the *fund*;

(ii) the amount of cash held on behalf of the *fund*; and

(iii) the total value of the portfolio of the *fund*.

2 Basis of valuation

A statement of the basis on which the value of each *investment* has been calculated and, if applicable, a statement that the basis for valuing a particular *investment* has changed since the previous *periodic statement*. Where any *investments* are shown in a currency other than the usual one used for valuation of the portfolio of the *fund*, the relevant currency exchange rates must be shown.

3 Details of any assets loaned or charged

(a) A summary of those *investments* (if any) which were, at the closing date, loaned to any third party and those *investments* (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the *fund*; and

(b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during the period.

4 Transactions and changes in composition

Except in the case of a portfolio which aims to track the performance of an external index:

General contents of periodic statements		
	(a)	a statement that summarises the transactions entered into for the portfolio of the *fund* during the period; and
	(b)	the aggregate of *money* and a summary of all investments transferred into and out of the portfolio of the *fund* during the period; and
	(c)	the aggregate of any interest payments, dividends and other benefits received by the *firm* for the portfolio of the *fund* during that period.
5	Charges and remuneration	
	If not previously advised in writing, a statement for the account period:	
	(a)	of the aggregate charges of the *firm* and its *associates*; and
	(b)	of any *remuneration* received by the *firm* or its *associates* or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio of the *fund*.
6	Movement in value of portfolio	
	A statement of the difference between the value of the portfolio at the closing date and its value at the starting date of the account period, having regard at least, during the account period, to the following:	
	(a)	the aggregate of assets received from investors of the *fund* and added to the portfolio of the *fund*;
	(b)	the aggregate of the value of assets transferred, or of amounts paid, to the*fund*;
	(c)	the aggregate income received on behalf of the *fund* in respect of the portfolio; and
	(d)	the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio of the *fund*.

Notes:

For the purposes of Item 1, where the *fund* is a *property enterprise trust*, it will be sufficient for the *periodic statement* to disclose the number of properties held in successive valuation bands where this is appropriate to the size and composition of the *fund*, rather than the value of each asset in the portfolio. The valuation bands of over £10m, £5-£10m, £2.5-£5m, £1-£2.5m and under £1m would be appropriate, unless a *firm* could show that different bands were justifiable in the circumstances.

The statement to be provided under Item 6 is not intended to be an indicator of the performance of the portfolio of the *fund*.

A *firm* may wish to distinguish capital and income, and thereby provide more information than referred to in this table. If the statement includes some measure of performance, the basis of measurement should be stated.

18.5.18 E Table: Contents of a periodic statement in respect of contingent liability investments

This table belongs to ■ COBS 18.5.15 E.

Contents of a periodic statement in respect of contingent liability investments	
(1)	Changes in value
	The aggregate of *money* transferred into and out of the portfolio of the *fund* during the account period.
(2)	Open positions
	In relation to each open position in the portfolio of the *fund* at the end of the account period, the unrealised profit or loss to the portfolio of the *fund* (before deducting or adding any *commission* which would be payable on closing out).
(3)	Closed positions
	In relation to each transaction effected during the account period to close out a position of the *fund*, the resulting profit or loss to the portfolio of the *fund* after deducting or adding any *commission*.
	(Instead of the specific detail required by Items 2 or 3, the statement may show the net profit or loss in respect of the overall position of the *fund* in each contract)
(4)	Aggregate of contents
	The aggregate of each of the following in, or relating to, the portfolio of the *fund* at the close of business on the valuation date:
	(a) cash;
	(b) *collateral* value;
	(c) management fees; and
	(d) *commissions* attributable to transactions during the period or a statement that this information has been separately disclosed in writing on earlier statements or confirmations to the investor.
(5)	Option account valuations
	In respect of each open *option* comprising the portfolio of the *fund* on the valuation date:
	(a) the *share*, *future*, index or other *investment* or asset involved;
	(b) (unless the valuation statement follows the statement for the period in which the *option* was opened) the trade price and date for the opening transaction;
	(c) the market price of the contract; and
	(d) the exercise price of the contract.
	Options account valuations may show an average trade price and market price in respect of an *option* series where a number of contracts within the same series have been purchased on behalf of the *fund*.

18.5A Full-scope UK AIFMs and incoming EEA AIFM branches

Application

18.5A.1 R Subject to ■ COBS 18.5A.2R, this section applies to a *firm* which is:

(1) a *full-scope UK AIFM* of:

(a) a *UK AIF*; and

(b) [deleted]

(c) (c)a *non-UK AIF*.

(2) [deleted]

18.5A.2 R The adequate information provisions in ■ COBS 18.5A.11R do not apply to a *full-scope UK AIFM* of:

(1) an *LTIF*; or

(2) an *unauthorised AIF* which is not a *collective investment scheme*.

Application or modification of general COBS rules

18.5A.3 R A *firm* when it is carrying on *AIFM investment management functions*:

(1) must comply with the *COBS rules* specified in the table, as modified by this section; and

(2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Full-scope UK AIFM
1 (Application)	Applies
2.1.4R (AIFMs best interest rule)	Applies
2.2B (SRD requirements)	Applies
2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies
5.2 (E-commerce)	Applies

11.2 (Best execution for AIFMs and residual CIS operators)	Applies as modified by COBS 18.5A.8R
18.5A (*Full-scope AIFMs*)	Applies as modified by COBS 18.5A.2R
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies (subject to COBS 18.5A.7R)

18.5A.4 G

(1) For activities that are not *AIFM investment management functions*, the *COBS rules* apply under the general application rule, as modified in ■ COBS 1 Annex 1.

(2) This may include, for example, activities relating to the administration of the *AIF*, *marketing* and activities related to the assets of the *AIF*.

General modifications

18.5A.5 R

Where *COBS rules* specified in the table in ■ COBS 18.5A.3R apply to a *firm* carrying on *AIFM investment management functions*, references to *customer* or *client* are to be construed as references to any *AIF* for which the *firm* is acting or intends to act.

Research and inducements

18.5A.6 R

Subject to ■ COBS 18.5A.7R, a *firm* must comply with ■ COBS 18 Annex 1 (Research and inducements for collective portfolio managers) when executing orders, or placing orders with other entities for execution, that relate to *financial instruments* for, or on behalf of, the *fund*.

18.5A.7 R

■ COBS 18 Annex 1 does not apply in relation to an *AIF* which in accordance with its core investment policy:

(1) does not generally invest in *financial instruments* that can be:

(a) registered in a *financial instruments* account opened in the books of a *depositary*; or

(b) physically delivered to the *depositary*; or

(2) generally invests in *issuers* or *non-listed companies* to potentially acquire control over such companies either individually or jointly with other *funds*.

Modification of best execution

18.5A.8 R

Only the following provisions in ■ COBS 11.2 apply:

(1) ■ COBS 11.2.5G;

(2) ■ COBS 11.2.17G;

(3) ■ COBS 11.2.23AR;

(4) ■ COBS 11.2.24R;

(5) ■ COBS 11.2.25R(1) and ■ COBS 11.2.26R, but only where an *AIF* itself has a governing body which can provide prior consent; and

(6) ■ COBS 11.2.27R, but only regarding the obligation on an *AIFM* to notify the *AIF* of any material changes to its order execution arrangements or execution policy.

18.5A.9 R References to the service of *portfolio management* in ■ COBS 11.2 (Best execution for AIFMs and residual CIS operators) are to be read as references to the management by a *firm* of *financial instruments* held for or within the *AIF*.

Distance marketing

18.5A.10 G *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK*, ■ COBS 5.1 applies specific requirements for that activity.

Adequate information

18.5A.11 R A *full-scope UK AIFM* that markets an *unauthorised AIF* to a *retail client* must, in addition to providing the information in ■ FUND 3.2 (Investor information), take reasonable steps to offer and, if requested, provide to that potential investor information about the following items:

(1) regulator – the *firm's* statutory status in accordance with ■ GEN 4 Annex 1R (Statutory status disclosure);

(2) commencement – when and how the *firm* is appointed;

(3) accounting – the arrangements for accounting to the *AIF* or investors in the *AIF* for any transaction effected;

(4) termination method – how the appointment of the *firm* may be terminated;

(5) complaints procedure – how to complain to the *firm* and a statement that the investors in the *AIF* may subsequently complain directly to the *Financial Ombudsman Service*;

(6) compensation – whether or not compensation may be available from the *compensation scheme* should the *firm* be unable to meet its liabilities, and information about any other applicable compensation scheme; and for each applicable compensation scheme, the extent and level of cover and how further information can be obtained;

(7) exchange rates – if a liability of the *AIF* in one currency is to be matched by an asset in a different currency, or if the services to be provided to the *firm* for the *AIF* may relate to an *investment* denominated in a currency other than the currency in which the *investments* of the *AIF* are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the portfolio of the *AIF*;

(8) stabilised investments – if it is the case, that the *firm* will have the right under the *AIF documents* to effect transactions in *investments*, the prices of which may be the subject of stabilisation;

(9) research and inducements – how the *firm* intends to pay for research. For example, whether the *firm* proposes to pay for *research* directly or to use a *research* payment account;

(10) acting as principal – if it is the case, that the *firm* may act as *principal* in a transaction with the *AIF*;

(11) underwriting commitments – if it is the case, that the *firm* may for the account of the portfolio of the *AIF* underwrite or sub-underwrite any issue or offer for sale of *securities*, and:

(a) whether there are any restrictions on the categories of *securities* which may be underwritten and, if so, what these restrictions are; and

(b) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;

(12) investments in other funds – whether or not the *AIF* may invest in *funds* either managed or advised by the *firm* or by an *associate* of the *firm* or in a *fund* which is not a *regulated collective investment scheme*; and

(13) investments in securities underwritten by the firm – whether or not the portfolio of the *AIF* may contain *securities* of which any issue or offer for sale was underwritten, managed or arranged by the *firm* or by an *associate* of the *firm* during the preceding 12 *months*.

18.5A.12 G Where a *full-scope UK AIFM* is required to publish a *key information document*, only information that is additional to that contained in the *key information document* needs to be disclosed under ■ COBS 18.5A.11R.

Prohibition on issue of bearer units

18.5A.13 G The effect of section 241A of the *Act* is that no bearer *units* in a *collective investment scheme* may be issued, converted or cancelled from 1 January 2021. However, the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346) contain transitional provisions for the conversion of bearer *units* to registered *units* and the cancellation of bearer *units* on or before 1 January 2022.

18.5B UCITS management companies

Application

18.5B.1 R This section applies to a *UCITS management company*.

Application or modification of general COBS rules

18.5B.2 R A *firm* when it is carrying on *scheme management activity*:

(1) must comply with the *COBS rules* specified in the table, as modified by this section; and

(2) need not comply with any other rule in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	UCITS management company
1 (Application)	Applies
2.1.1 (The client's best interests rule)	Applies
2.2B (SRD requirements)	Applies
2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)	Applies, as modified by COBS 2.3.1AR and COBS 2.3.2AR
2.3B (Inducements and research)	Applies, as modified by COBS 18 Annex 1
2.4 (Agent as client and reliance on others)	Applies
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies
5.2 (E-commerce)	Applies
11.2B (Best execution for UCITS management companies)	Applies
11.3 (Client order handling)	Applies
11.7 (Personal account dealing)	Applies
11 Annex 1EU (Regulatory technical standard 28)	Applies as *rules*
18.5B (UCITS management companies)	Applies
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies

18.5B.3 G

(1) For activities which are not *scheme management activity*, the *COBS rules* apply under the general application rule, as modified in ■ COBS 1 Annex 1.

(2) This may include, for example, activities relating to the administration and *marketing* of the *scheme*.

General modifications

18.5B.4 R

Where *COBS rules* specified in the table in ■ COBS 18.5B.2R apply to a *firm* carrying on *scheme management activities*, the following modifications apply:

(1) subject to (2), references to *customer* or *client* are to be construed as references to any *scheme* in respect of which the *firm* is acting or intends to act; and

(2) references to the service of *portfolio management* in ■ COBS 11.3 (Client order handling) are to be read as references to *collective portfolio management*.

18.5B.5 G

(1) ■ COBS 1.2 (Markets in Financial Instruments Directive) contains modifications to the text of the *MiFID Org Regulation* where this is applied as *rules* to *firms* that are not subject to those provisions directly.

(2) These modifications apply to the following sections that are applied in the table in ■ COBS 18.5B.2R:

(a) ■ COBS 11.3 (Client order handling); and

(b) ■ COBS 11 Annex 1EU (Regulatory technical standard 28).

Research and inducements

18.5B.6 R

A *firm* must comply with ■ COBS 18 Annex 1 (Research and inducements for collective portfolio managers) when *executing* orders, or placing orders with other entities for execution, that relate to *financial instruments* for, or on behalf of, the *fund*.

Distance marketing

18.5B.7 G

Firms should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK*, ■ COBS 5.1 applies specific requirements for that activity.

18.6 Lloyd's

Application

18.6.1 R This section applies to a *firm* when it carries on *Lloyd's market activities*.

COBS rules that apply to Lloyd's market activities

18.6.2 R Only ■ COBS 3 (Client categorisation) and the *financial promotion rules* apply when a *firm* is carrying out *Lloyd's market activities*.

18.6.3 G *Firms* are reminded that *syndicate* business plans may be used in ways that bring them within the definition of a *financial promotion*.

Definitions and modifications

18.6.4 R When a *firm* is carrying on *Lloyd's market activities*, any reference in *COBS* to the term:

(1) *designated investment* is to be taken to include the following specified investments:

(a) the *underwriting capacity of a Lloyd's syndicate*;

(b) *membership of a Lloyd's syndicate*; and

(c) *rights to or interests in the specified investments* in (a) or (b);

(2) *designated investment business* is to be taken to include the following *regulated activities*:

(a) *advising on syndicate participation at Lloyd's*;

(b) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*; and

(c) *agreeing to carry on the regulated activities* in (a) or (b).

The Principles and Lloyd's market activities

18.6.5 G Whilst *COBS* has limited application to *Lloyd's market activities*, firms conducting *Lloyd's market activities* are reminded that they are required to comply with the *Principles*.

18.6A Insurance Special Purpose Vehicles (ISPVs)

Application

18.6A.1 R This section applies to *UK ISPVs*.

COBS rules that apply to insurance risk transformation and activities directly arising from insurance risk transformation

18.6A.2 R ■ COBS 3 applies (subject to ■ COBS 18.6A.3R) when a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*.

Definitions and modifications

18.6A.3 R When a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*:

(1) The general definition of *client* in ■ COBS 3.2.1R is modified as set out in ■ COBS 18.6A.3R(2) below.

(2) Any reference to the term *client* is to be taken to include:

(a) a *person* to whom the *firm* provides, intends to provide or has provided a service in the course of carrying on activities directly arising from *insurance risk transformation* (including the offer of *investments* issued by the *firm*); or

(b) (in *DISP* only) a *person* who is holding or has held an *investment* issued by the *firm*.

(3) ■ COBS 3.6.1R(2) does not apply. A client can be an *eligible counterparty* in relation to *insurance risk transformation* and activities directly arising from *insurance risk transformation*.

18.6A.4 G For the avoidance of doubt, the remainder of ■ COBS 3.2 and ■ COBS 3.6 applies.

Communications with clients

18.6A.5 R Before an *investment* issued by an *ISPV* is sold to a *client* (that is not an *eligible counterparty*), the *ISPV* must ensure that the *client* is informed that compensation will not be available from the *FSCS* if the *ISPV* cannot meet its liabilities.

18.6A.6 R A statement that compensation will not be available from the *FSCS* must be included in any brochure or other written communication by which an *ISPV* offers *investments* to *clients*.

18.6A.7 G For the avoidance of doubt, ■ COBS 18.6A.5R and ■ COBS 18.6A.6R do not exhaust or restrict the scope of *Principle* 7.

18.7 Depositaries

18.7.1 R Only the *COBS* provisions in the table apply to a *depositary* when acting as such, when carrying on business which is not *MiFID or equivalent third country business*:

COBS	Description
2.1	Acting honestly, fairly and professionally
2.3	Inducements, except COBS 2.3.1 R (2)(b) and COBS 2.3.2 R
4	Communication to clients including financial promotions, but only in relation to *communicating* or *approving* a *financial promotion*
11.7	Personal account dealing

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.6 R, ■ 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 "UK" 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 "UK" and ■ COBS 11 Annex 1UK (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.34UK (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.34UK (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 ""UK" 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 *occupational pension scheme* as at the closing and starting date of the *periodic statement*.
(b)	Details of any asset loaned or charged (i) a summary of any *investments* that were, at the closing date, lent to a third party and any *investments* 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 re

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity	
	ceived during the account period in respect of loans or borrowings made during that period and a comparison with the previous period.
(c)	*Transactions* and changes in composition
	(i) a summary of the *transactions* entered into for the portfolio during the period and a comparison with the previous period;
	(ii) the aggregate of *money* and a summary of all *investments* 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 *firm* for the portfolio during that period and a comparison with the previous period.
(d)	*Charges* and *remuneration*
	If not previously advised in writing, a statement for the period of account:
	(i) of the aggregate *charges* of the *firm* and its *associates*; and
	(ii) of any *remuneration* received by the *firm* or its *associates* or both from a third party in respect of the *transactions* 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 *occupational pension scheme* and added to the portfolio;
	(ii) the aggregate of the value of assets transferred, or of amounts paid, to the *client*;
	(iii) the aggregate income received on behalf of the *client* 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*.

18.9 ICVCs

18.9.1 R

(1) The *financial promotion rules* in *COBS* apply to an *ICVC*, except that COBS 4.13 (UCITS) applies only to an *ICVC* that is a *UCITS scheme*.

(2) ■ COBS 14.2 (Providing product information to clients) applies to an *ICVC* that is a *UCITS scheme*.

(3) ■ COBS 2.2B (SRD requirements) applies to an *ICVC* that is a *UCITS scheme* without a separate *management company*.

18.9.2 G

Firms should note that the *operator* of an *ICVC* when it is undertaking *scheme management activity* will be subject to:

(1) ■ COBS 18.5.2R if the *operator* is a *small authorised UK AIFM*; or

(2) ■ COBS 18.5A.3R if the *operator* is a *full-scope UK AIFM*; or

(3) ■ COBS 18.5B.2R if the *operator* is a *UCITS management company*.

18.10 Service companies

18.10.1 R The *COBS* provisions in the table apply to a *service company*:

COBS	Description
4	Communications to clients, but only in relation to *communicating* or *approving* a *financial promotion*
5.2	E-Commerce
12.4	Research recommendations: required disclosures

18.10.2 R [deleted]

18.11 Authorised professional firms

18.11.1 R *COBS* applies to an *authorised professional firm*, except that its application in relation to *non-mainstream regulated activities* and *financial promotion* is modified as set out below.

18.11.1A G In certain respects, the application of *COBS* to an *authorised professional firm* will be determined by the *firm's* status as a *MiFID investment firm*, a *MiFID optional exemption firm* or a *firm* to which *MiFID* does not apply.

18.11.2 R *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:

(1) the *fair, clear and not misleading rule* applies;

(2) the *financial promotion rules* apply as modified below;

(3) the *rules* in the following parts of *COBS* which implemented the *IDD* apply in relation to *insurance distribution activities*:

(a) ■ COBS 2.1.1R, ■ COBS 2.2A and ■ COBS 2.3A (Conduct of business obligations);

(b) ■ COBS 4 (Communicating with clients, including financial promotions);

(c) ■ COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions));

(d) ■ COBS 7 (Insurance distribution);

(e) ■ COBS 8 (Client agreements);

(f) ■ COBS 9 (Suitability (including basic advice) (other than MiFID and insurance-based investment products provisions)) and ■ COBS 9A (Suitability (MiFID and insurance-based investment products provisions));

(g) ■ COBS 10A (Appropriateness (for non-advised services));

(h) ■ COBS 14.2 (Providing product information to clients); and

(i) ■ COBS 16A.2 (General client reporting and record keeping requirements),

but only if the *designated professional body* of the *firm* does not have rules approved by the *FCA* under section 332(5) of the *Act* that implemented articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the *IDD* and that apply to the *firm*;

(4) ■ COBS 8.1.3 R (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and

(5) ■ COBS 5.2 (E-commerce) applies.

18.11.2A G For ■ COBS 18.11.2R(3) if a *rule* implemented a requirement of the *IDD*, a note (“**Note:**”) follows the *rule* indicating which provision was being implemented.

18.11.3 R The *financial promotion rules* do not apply to an *authorised professional firm* in relation to the *communication* of a *financial promotion* if:

(1) the *firm's* main business is the practice of its profession (see IPRU(INV) 2.1.2R(3));

(2) the *financial promotion* is made for the purposes of and incidental to the promotion or provision by the *firm* of its professional services or its *non-mainstream regulated activities*; and

(3) the *financial promotion* is not *communicated* on behalf of another *person* who would not be able lawfully to *communicate* the *financial promotion* if he were acting in the course of business;

however, a *firm* may use the exemptions for promoting *unregulated collective investment schemes* in ■ COBS 4 (Communicating with clients, including financial promotions) if it wishes.

18.11.4 G The *rules* on *approving financial promotions* continue to apply.

18.12 Operating an electronic system in relation to lending

Application

18.12.1 R This section applies to *an operator of an electronic system in relation to lending*, but only in relation to a *person* becoming a lender under a *P2P agreement*.

18.12.2 R This section does not apply in relation to a current account agreement where:

(1) there is a possibility that the account holder may be allowed to overdraw on the current account without a pre-arranged overdraft or to exceed a pre-arranged overdraft limit; and

(2) if the account holder did so, this would be a *P2P agreement* (overrunning).

Purpose

18.12.3 G The purpose of this chapter is to ensure that, where applicable, a *firm*:

prices and values *P2P agreements* fairly and appropriately;

will prevent lenders being exposed to risk outside of the parameters advertised at the time of investment;

has a reasonable basis to conclude that a *target rate* can be reasonably achieved; and

can support the statements made in its disclosures and financial promotions.

Interpretation

18.12.4 R In the remainder of this section:

(1) references to a *P2P agreement* include *non-P2P agreements* included in a *P2P portfolio*;

(2) unless the context otherwise requires, references to "lender" also include a prospective lender;

(3) a *firm* is treated as having determined the *price* of a *P2P agreement* in cases other than where the lender and the borrower have entered

into a genuine negotiation to determine the *price* of that *P2P agreement*; and

(4) references to repayment refer to repayment of capital or payment of interest or other charges (excluding any charge for non-compliance with a *P2P agreement*).

Credit risk assessment

18.12.5 R Where a *firm* determines the *price* of a *P2P agreement*, it must undertake a reasonable assessment of the credit risk of the borrower before the *P2P agreement* is made.

18.12.6 R A *firm* must base its *credit risk assessment* on sufficient information:

(1) of which it is aware at the time the *credit risk assessment* is carried out;

(2) obtained, where appropriate, from the borrower, and, where necessary, any other relevant sources of information.

The subject matter of the credit risk assessment

18.12.7 R The *firm* must consider the risk that the borrower will not make one or more repayments under the *P2P agreement* by the due date.

Scope, extent and proportionality of the credit risk assessment

18.12.8 R

(1) The extent and scope of the *credit risk assessment*, and the steps that the *firm* must take to satisfy the requirement that the assessment is a reasonable one and based on sufficient information, is dependent upon, and proportionate to, the individual circumstances of each case.

(2) The *firm* must consider:

(a) the types of information to use in the *credit risk assessment*;

(b) the content and level of detail of the information to use;

(c) whether the information in the *firm's* possession is sufficient;

(d) whether and to what extent to obtain additional information from the borrower;

(e) whether and to what extent to obtain information from any other sources;

(f) whether and to what extent to verify the accuracy of the information that is used; and

(g) the degree of evaluation and analysis of the information that is used,

having regard to the factors listed in (3) where applicable to the agreement.

(3) The factors to which the *firm* must have regard when complying with (2) and deciding what steps are needed to make the *credit risk assessment* a reasonable one include each of the following where applicable to the agreement:

(a) the type of *credit*;

(b) the amount of the *credit* or the *credit limit*;

(c) the duration (or likely duration) of the *credit*;

(d) the frequency of the repayments;

(e) the amount of the repayments;

(f) the annual percentage rate of charge; and

(f) any other costs, including any charge for non-compliance with the agreement, which will or may be payable by or on behalf of the borrower in connection with the agreement.

18.12.9 G The *firm* may have regard, where appropriate, to information obtained:

(1) in the course of previous dealings with the borrower but should consider whether the passage of time could have affected the validity of the information and whether it is appropriate to update it;

(2) as part of conducting a *credit-worthiness assessment* in relation to a *P2P agreement* in accordance with ■ CONC 5.5A; or

(3) as part of assessing affordability in relation to a *P2P agreement* comprising a *home finance transaction*, in accordance with ■ MCOB 11 as modified by ■ MCOB 15.

Policies and procedures for credit risk assessment

18.12.10 R A *firm* must:

(1) establish, implement and maintain clear and effective policies and procedures:

(a) to enable it to carry out *credit risk assessments*; and

(b) setting out the principal factors it will take into account in carrying out *credit risk assessments*;

(2) set out in writing the policies and procedures in (1), and (other than in the case of a *sole trader*) have them approved by its *governing body* or *senior personnel*;

(3) assess and periodically review:

(a) the effectiveness of the policies and procedures in (1); and

(b) the *firm's* compliance with those policies and procedures and with its obligations under ■ COBS 18.12.5R to ■ 18.12.8R;

(4) following the review in (3), take appropriate measures to address any deficiencies in the policies and procedures or in the *firm's* compliance with its obligations;

(5) maintain a record of each transaction where a *P2P agreement* is entered into sufficient to demonstrate that:

(a) a *credit risk assessment* was carried out where required; and

(b) the *credit risk assessment* was reasonable and was undertaken in accordance with ■ COBS 18.12.5R to ■ 18.12.8R,

and in each case to enable the *FCA* to monitor the *firm's* compliance with its obligations under ■ COBS 18.12.5R to ■ 18.12.8R; and

(6) (other than in the case of a *sole trader*) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (5).

Pricing, allocation and portfolio composition

18.12.11 R Where a *firm* determines the *price* of a *P2P agreement* it must ensure that the *price* is fair and appropriate.

18.12.12 R To determine a fair and appropriate *price* for a *P2P agreement* the *firm* must at least ensure:

(1) the *price* is reflective of the risk profile of the loan; and

(2) the *firm* has taken into account:

(a) the time value of money; and

(b) the credit spread of the *P2P agreement*.

18.12.13 R Where a *firm* selects which *P2P agreements* to facilitate for a lender, it must facilitate only those *P2P agreements* which are in line with the disclosures made pursuant to ■ COBS 18.12.27R.

18.12.14 R Where a *firm* is assembling or managing a *P2P portfolio*, it must ensure that it includes in that *P2P portfolio* only those *P2P agreements* it has determined with reasonable certainty will enable the lender to achieve the *target rate*.

18.12.15 G To be able to comply with ■ COBS 18.12.14R, a *firm* should use appropriate data and robust modelling. The data may be the *firm's* own or may be sourced from third parties. Modelling could include the *firm's credit risk assessment* of all borrowers under *P2P agreements* included in the *P2P portfolio*, taking into account the expected losses and the variability of losses through the cycle, and the *price* of such agreements as calculated in accordance with ■ COBS 18.12.12R.

18.12.16 R Where a *firm* determines the *price* of a *P2P agreement* it must review the valuation of each *P2P agreement* in at least the following circumstances:

(1) when the *P2P agreement* is originated;

(2) where the *firm* considers that the borrower is unlikely to pay its obligations under the *P2P agreement* in full, without the *firm* enforcing any relevant security interest or taking other steps with analogous effect;

(3) following a *default*; and

(4) where the *firm* is facilitating an exit for a lender before the maturity date of the *P2P agreement*.

18.12.17 R Where a *firm* that determines the *price* of *P2P agreements* is facilitating an exit for a lender before the maturity date of a *P2P agreement*, the *firm* must ensure that the price offered for exiting the *P2P agreement* is fair and appropriate.

Risk management framework

18.12.18 R

(1) Where any of ■ COBS 18.12.11R to ■ 18.12.17R apply, a *firm* must have and use a *risk management framework* that is designed to achieve compliance with those *rules*.

(2) The *firm's risk management framework* must at least:

(a) be appropriate to the nature, scale and complexity of its business;

(b) take into account any *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability under *MCOB*;

(c) categorise *P2P agreements* by their risk, taking into account the probability of default and the loss given default; and

(d) set out the circumstances in which the *firm* will review the valuation of each *P2P agreement*.

(3) The *firm* must set out in writing the *risk management framework*, and have it approved by its *governing body* or *senior personnel*.

18.12.19 G Where ■ COBS 18.12.11R to ■ 18.12.17R do not apply to a *firm*, it would be good practice for the *firm* to consider whether, depending on its business model, it should apply the requirements in ■ COBS 18.12.18R(1) to ■ (3).

Monitoring of the risk management framework

18.12.20 R A *firm* with a *risk management framework* must:

(1) assess, monitor and periodically review the adequacy and effectiveness of the *risk management framework*, including by assessing outcomes against expectations;

(2) pursuant to (1), take appropriate measures to address any deficiencies in the *risk management framework*;

(3) maintain a record of each transaction where it has used the *risk management framework* to facilitate a *P2P agreement* sufficient to demonstrate that:

(a) the *price* of the *P2P agreement* was fair and appropriate in line with the *risk management framework*;

(b) where the *firm* selected which *P2P agreements* to facilitate for a lender, that its selection was in line with the *risk management framework*;

(c) any inclusion in a *P2P portfolio* was in line with the *risk management framework*,

and in each case to enable the *FCA* to monitor the *firm's* compliance with its obligations regarding the *risk management framework*;

(4) establish, implement and maintain robust governance arrangements and internal control mechanisms designed to ensure the *firm's* compliance with (1) to (3); and

(5) allocate to an *approved person* overall responsibility within the *firm* for the establishment and maintenance of an effective *risk management framework* and record that allocation.

Publication of an outcomes statement

18.12.21 R Where a *firm* determines the *price* of *P2P agreements* in any financial year of the *firm*, it must publish an *outcomes statement* within four *months* of the end of each financial year.

18.12.22 R A *firm* must ensure that each *outcomes statement* remains publicly available for at least 10 years from publication.

Content of an outcomes statement

18.12.23 R An *outcomes statement* must include, as applicable, for the financial year of the *firm*:

(1) the expected and actual *default* rate of all *P2P agreements* the *firm* has facilitated by risk category, by reference to the risk categories set out in the *risk management framework*, in line with the requirements in ■ COBS 4.6 on past and future performance;

(2) a summary of the assumptions used in determining expected future *default* rates; and

(3) where the *firm* offered a *target rate*, the actual return achieved.

Information: role of an operator of an electronic system in relation to lending

18.12.24 R A *firm* must provide to a lender a description of its role in facilitating *P2P agreements*. That description must include:

(1) the nature and extent of due diligence the *firm* undertakes in respect of borrowers;

(2) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the *firm* considers the borrower eligible for a *P2P agreement*;

(3) whether the *firm* will play a role in determining the *price* of a *P2P agreement* and, if so, what role;

(4) where lenders do not have the choice to enter into specific *P2P agreements*, what role the *firm* will play in selecting *P2P agreements* for the lender;

(5) where a *firm* offers a *P2P portfolio* to lenders, what role it will play in assembling or managing that *P2P portfolio*;

(6) an explanation of the *firm's* procedure for dealing with a loan in late payment or default;

(7) an explanation of how any tax liability for lenders arising from investment in *P2P agreements* will be calculated;

(8) whether the *firm* will play a role in facilitating a secondary market in *P2P agreements* and, if so, what role, including:

(a) the procedure for a lender to access their money before the term of the *P2P agreement* has expired and the risk to their investment of doing so; and

(b) whether the *firm* displays *P2P agreements* that lenders wish to exit and that other lenders may choose to enter into; or

(c) whether the *firm* decides if the *P2P agreement* should be transferred to another lender without involving either lender in that decision.

Information: Financial Services Compensation Scheme

18.12.25 R A *firm* must provide confirmation to a lender that there is no recourse to the Financial Services Compensation Scheme.

Information: P2P agreements where the lender selects the agreements

18.12.26 R Where a lender has the choice to enter into specific *P2P agreements*, a *firm* must provide the lender with at least the following information about each *P2P agreement*:

(1) where the *firm* determines the *price* of *P2P agreements*, the *price* of the *P2P agreement*;

(2) where not provided under (1), the annual percentage rate that will be paid by the borrower in respect of that *P2P agreement*, where applicable to that agreement;

(3) when the *P2P agreement* is due to mature;

(4) the frequency of the repayments to be made by the borrower;

(5) the amounts of the repayments to be made by the borrower;

(6) the total amount payable by the borrower;

(7) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;

(8) where the *firm* determines the *price* of *P2P agreements*, details of the *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability under *MCOB* carried out;

(9) whether the *P2P agreement* is backed by an asset (for example, secured against property developments) and if so, details of that asset;

(10) fees to be paid by the borrower or the lender, including any deduction from the interest to be paid by the borrower;

(11) where the *firm* determines the *price* of *P2P agreements*, the risk categorisation of that *P2P agreement* and an explanation of that risk categorisation, by reference to the risk categories set out in the *risk management framework*; and

(12) where any of the terms in respect of which information must be provided under sub-paragraphs (1) to (7) is set by auction, a description of the auction process and of how those terms will be determined.

Information: P2P agreements where the firm selects the agreements

18.12.27 R Where a *firm* selects which *P2P agreements* to facilitate for a lender, including where a *firm* offers a *P2P portfolio* to a lender, the *firm* must provide the lender with the following information about the *P2P agreements* it may facilitate for the lender:

(1) the minimum and maximum interest rate that will be payable under any *P2P agreement* that may be facilitated for the lender;

(2) the minimum and maximum maturity date of any *P2P agreement* that may be facilitated for the lender;

(3) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;

(4) fees to be paid by the borrower or the lender, including any deduction from the interest to be paid by the borrower; and

(5) the range and distribution of risk categories that the *P2P agreements* may fall into and an explanation of those risk categories by reference to the risk categories set out in the *risk management framework*.

Information concerning platform failure

18.12.28 R (1) A *firm* must notify each lender of the *firm's* arrangements made under ■ SYSC 4.1.8AR to ensure that *P2P agreements* facilitated by it will continue to be managed and administered in accordance with the contract terms between the *firm* and the lender.

(2) Where a *firm's* arrangements made under ■ SYSC 4.1.8AR include particular terms in its contracts with lenders, or include obtaining particular prior consents from lenders, the *firm* must clearly identify these arrangements and explain how they operate.

(3) Where a *firm's* arrangements made under ■ SYSC 4.1.8AR involve another *person* taking over the management and administration of *P2P agreements* if the *firm* ceases to *operate the electronic system in relation to lending*, the notification must inform lenders of:

(a) the identity of the *person* with which the arrangements have been made;

(b) how that *person* will hold the lenders' money; and

(c) whether that *person* is authorised by the *FCA* and, if it is, which relevant *Part 4A permissions* it holds.

(4) A *firm* must also explain to each lender the particular risks to the management and administration of *P2P agreements* in the event of its own *failure*, including:

the possibility that *P2P agreements* may cease to be managed and administered before they mature;

the possibility that any *person* involved in the continued management and administration of *P2P agreements* after the *firm* fails may not be subject to the same regulatory regime and requirements as the *firm*, and the resulting possibility that regulatory protections may be reduced or no longer available; and

the likelihood that the majority of balances due to the lender are those due from borrowers rather than from the *firm* itself, so if the *firm fails* a lender's entitlement to any *client money* held by the *firm* would not include those balances that the *firm* has not yet received from borrowers.

The timing rules

18.12.29 R

(1) The information to be provided in accordance with ■ COBS 18.12.24R to ■ 18.12.25R and ■ 18.12.27R to ■ 18.12.28R must be provided in good time before a *firm* carries on the relevant business for a lender.

(2) The information to be provided in accordance with ■ COBS 18.12.26R must be provided each time before a *firm* facilitates a person becoming a lender under a *P2P agreement*, and in good time before doing so.

(3) Where any of the terms in respect of which information must be provided under ■ COBS 18.12.26R(1) to ■ (7) are set by auction, that information must be provided as soon as reasonably practicable after those terms have been set as a result of the auction.

Keeping the client up to date

18.12.30 R

(1) A *firm* must notify a lender in good time about any material change to the information provided under the *rules* in ■ COBS 18.12.24R and ■ 18.12.28R.

(2) The notification in (1) must be given in a *durable medium* if the information to which it relates was given in a *durable medium*.

Ongoing disclosures

18.12.31 R

A *firm* must ensure that, at any point in time, a lender is able to access details of each *P2P agreement* they have entered into which was facilitated by that *firm*, including:

(1) the *price* of the *P2P agreement*;

(2) where not provided under (1), the annual percentage rate that will be paid by the borrower in respect of that *P2P agreement*, where applicable to that agreement;

(3) the outstanding capital and interest payments in respect of that *P2P agreement*;

(4) when the *P2P agreement* is due to mature;

(5) any fees paid in respect of that *P2P agreement* by the lender or the borrower;

(6) if the *firm* has carried out a valuation of the *P2P agreement*:

(a) the most recent valuation;

(b) the valuation date; and

(c) an explanation of why the *firm* conducted the valuation;

(7) a fair description of the likely actual return, taking into account fees, *default* rates and taxation;

(8) where the *firm* determines the price of *P2P agreements*, details of the *credit risk assessment*, *credit-worthiness assessment* or assessment of affordability carried out under *MCOB*;

(9) whether the *P2P agreement* is backed by an asset (for example, secured against property developments) and if so, details of that asset;

(10) where the *firm*:

(a) determines the *price* of *P2P agreements*;

(b) selects which *P2P agreements* to facilitate for a lender; or

(b) offers a *target rate*,

the risk categorisation of that *P2P agreement* and an explanation of that risk categorisation, by reference to the risk categories set out in the *risk management framework*;

(11) whether the *firm* considers that the borrower is unlikely to pay its obligations under the *P2P agreement* in full without the *firm* enforcing any relevant security interest or taking other steps with analogous effect and, if so, information to that effect; and

(12) whether a *default* by the borrower under a *P2P agreement* has occurred and, if so, information to that effect.

Information: form

18.12.32 R The *documents* and information provided in accordance with ■ COBS 18.12.24R to ■ 18.12.28R and ■ COBS 18.12.31R must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

Contingency funds: standardised risk warning

18.12.33 R (1) In addition to any other risk warnings that must be given by a *firm*, a *firm* must provide the following risk warning to a lender when it offers a *contingency fund*, modified as necessary to reflect the terminology used by the *firm* to refer to a *contingency fund*:

"The contingency fund we offer does not give you a right to a payment so you may not receive a pay-out even if you suffer loss. The fund has absolute discretion as to the amount that may be paid, including making no payment at all. Therefore, investors should not rely on possible pay-outs from the contingency fund when considering whether or how much to invest."

(2) The *firm* must provide the risk warning in a prominent place on every page of each website and mobile application of the *firm* available to lenders containing any reference to a *contingency fund*.

(3) Where the lender has not approached the *firm* through a website or mobile application, the risk warning must be provided in a *durable medium* in good time before the *firm* carries on any business for that lender.

18.12.34 R The standardised risk warning must be:

(1) prominent; and

(2) contained within its own border and with bold text as indicated.

Contingency funds: published policy

18.12.35 R

(1) A *firm* which offers a *contingency fund* to lenders must have a *contingency fund policy*.

(2) The *contingency fund policy* must contain the following information:

(a) an explanation of the source of the money paid into the fund;

(b) an explanation of how the fund is governed;

(c) an explanation of who the money belongs to;

(d) the considerations the fund operator takes into account when deciding whether or how to exercise its discretion to pay out from the fund, including examples. This should include:

(i) whether or not the fund has sufficient money to pay; and

(ii) that the fund operator has absolute discretion in any event not to pay or to decide the amount of the payment;

(e) an explanation of the process for considering whether to make a discretionary payment from the fund; and a description of how that money will be treated in the event of the *firm's* insolvency.

(f) The *contingency fund policy* must be provided on every page of each website and mobile application of the *firm* available to lenders and must be:

(3) The *contingency fund policy* must be provided on each website and mobile application of the *firm* available to lenders and must be:

(a) prominent;

(b) in an unrestricted part of the website or mobile application; and

(c) accessible via a link contained in the standardised risk warning in COBS 18.12.33R.

(4) Where the lender has not approached the *firm* through a website or mobile application this information must be provided in a *durable medium* in good time before the *firm* carries on any business for that lender.

18.12.36 G When deciding whether to pay out from the *contingency fund*, a *firm* should take into account fairness to lenders and whether the lender made an active choice about whether or not to participate in the *contingency fund*.

Contingency funds: information when the fund is used

18.12.37 R

(1) A *firm* must notify a lender if they receive payment from a *contingency fund*.

(2) This notification must state the amount paid to the lender from the *contingency fund*.

(3) This notification must be provided either:

(a) at the time the payment is made; or

(b) on an aggregated basis at least once every three *months*.

Contingency funds: information about how the fund is performing

18.12.38 R

A *firm* which offers a *contingency fund* must make public on a quarterly basis the following facts about how the fund is performing:

the size of the fund compared to total amounts outstanding on *P2P agreements* relevant to the *contingency fund*;

what proportion of outstanding borrowing under *P2P agreements* has been paid using the *contingency fund*; and

a *firm* must:

(a) only include the actual amount of money held in the *contingency fund* at the relevant time, net of any liabilities or pay outs agreed but not yet paid; and

(b) not include any amounts due to be paid into the *contingency fund* that have not yet been paid into it.

Past performance

18.12.39 R

A *firm* must ensure that information that contains an indication of past performance only contains information that is reflective of the actual payments received by lenders from borrowers under *P2P agreements*.

18.12.40 G

One of the consequences of ■ COBS 18.12.39R is that payments made to lenders from a *contingency fund* should not be reflected in any information that contains an indication of past performance. Firms should also take into account the effect of commissions, fees and other charges.

Research and inducements for collective portfolio managers

1	Application				
1.1	G	This section applies to:			
		(1)	a *small authorised UK AIFM* and a *residual CIS operator*, in accordance with COBS 18.5.2R;		
		(2)	a *full-scope UK AIFM*, in accordance with COBS 18.5A.3R;		
		(3)	a *UCITS management company*, in accordance with COBS 18.5B.2R.		
1.2	G	In accordance with COBS 18.5.3CR and COBS 18.5A.7R, this section does not apply in relation to an *AIF* or *CIS* which in accordance with its core investment policy:			
		(1)	does not generally invest in *financial instruments* that can be:		
			(a)	registered in a *financial instruments* account opened in the books of a *depositary*; or	
			(b)	physically delivered to the *depositary*; or	
		(2)	generally invests in *issuers* or *non-listed companies* to potentially acquire *control* over such companies either individually or jointly with other *funds*.		
2	Rule on research and inducement				
2.1	R	When *executing* orders, or placing orders with other entities for execution, that relate to *financial instruments* for, or on behalf of, the *fund*, a *firm* must not:			
		(1)	accept and retain any fees, commissions or monetary benefits; or		
		(2)	accept any non-monetary benefits,		
		where these are paid or provided by any third party or a *person* acting on behalf of a third party.			
2.2	R	A *firm* must:			
		(1)	return to the *fund* as soon as reasonably possible after receipt any fees, commissions or any monetary benefits paid or provided by any third party or a *person* acting on behalf of a third party in relation to the services provided to that *fund*; and		
		(2)	inform the investors in the *fund* about the fees, commissions or any monetary benefits transferred to them (see paragraph 2.4G).		
2.3	R	Paragraph 2.1R does not apply to:			
		(1)	minor non-monetary benefits that are:		
			(a)	capable of enhancing the quality of service provided to the *fund* (see paragraph 3.1R); and	
			(b)	of a scale and nature such that they could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *fund*; and	

		(2)	*research* if the requirements of COBS 2.3B (Inducements and research) as modified by paragraph 4 are met.		
2.4	G	A *firm* may inform investors in the *fund* about the fees, commissions or monetary benefits transferred to them through:			
		(1)	the periodic reporting statements provided to *participants* in an *unregulated collective investment scheme* in accordance with COBS 18.5.11R for a *small authorised UK AIFM* or a *residual CIS operator*; or		
		(2)	the annual reports provided on request to investors, for a *small authorised UK AIFM* in relation to an *authorised AIF*, a *full-scope UK AIFM*, or a *UCITS management company*.		
3	Acceptable minor non-monetary benefits				
3.1	R	A *firm* must not accept a non-monetary benefit unless it is a minor non-monetary benefit which is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the *fund*, and which consists of:			
		(1)	information or documentation relating to a *financial instrument* that is generic in nature; or		
		(2)	written material from a third party that:		
			(a)	is either:	
				(i)	commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company; or
				(ii)	produced on an ongoing basis, where the third party is contractually engaged and paid by the *issuer*;
			(b)	clearly discloses the relationship between the third party and the *issuer*; and	
			(c)	is made available at the same time to any *firm* wishing to receive it, or to the general public; or	
		(3)	participation in conferences, seminars and other training events on the benefits and features of a specific *financial instrument*; or		
		(4)	hospitality of a reasonable de minimis value, such as food and drink during a business meeting or another training event mentioned under (3); or		
		(5)	research relating to an issue of *shares*, *debentures*, *warrants* or *certificates representing certain securities* by an *issuer*, which is:		
			(a)	produced by a *person* that is providing underwriting or placing services to the *issuer* on that issue;	
			(b)	made available to prospective investors in the issue; and	
			(c)	disseminated before the issue is completed; or	

(6) free sample *research* provided for a limited trial period where:

(a) the trial period lasts no longer than three months;

(b) the trial period is not commenced with a provider within 12 *months* from the termination of an arrangement for the provision of *research* (including a previous trial period) with that provider;

(c) the research provider offering the free trial has no existing relationship with the recipient *firm* for the provision of *research* or *execution* services; and

(d) the recipient *firm* keeps records of the dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in (a) to (c) above.

(7) *research* on listed or unlisted companies with a market capitalisation below £200m, provided that it is offered on a rebundled basis or provided for free. The market capitalisation is to be calculated with reference to the average closing price of the shares of the company at the end of each *month* to 31 October for the preceding 24 *months*. For companies newly admitted to trading, determination of the threshold should be based on the market capitalisation at the close of day one trading and apply until the date of the next re-assessment (i.e., 31 October). For these purposes, *firms* may reasonably rely on the assessment of a third party that the *research* is on a company with a market capitalisation below £200m;

(8) third party *research* that is received by a *firm* providing investment services or ancillary services to clients where it relates to fixed income, currency or commodity instruments;

(9) *research* received from a research provider where the research provider is not engaged in *execution* services and is not part of a financial services group that includes an *investment firm* that offers *execution* or brokerage services;

(10) written material that is made openly available from a third party to any *firm* wishing to receive it or to the general public. "Openly available" in this context means that there are no conditions or barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a *firm* or a member of the public in order to access that material; or

(11) corporate access services which relate to listed or unlisted companies with a market capitalisation below £200m in accordance with paragraph 3.1 R(7).

3.2 G An acceptable minor non-monetary benefit consisting of information or documentation relating to a *financial instrument* that is generic in nature may include material provided by a third party that:

(1) consists of:

(a) short term market commentary on the latest economic statistics; or

(b) company results or information on upcoming releases or events;

(2) contains only a brief unsubstantiated summary of the third party's own opinion on such information; and

(3) does not include any substantive analysis (for example, where the third party simply reiterates a view based on an existing recommendation or substantive research).

3.3	G	A non-monetary benefit that involves a third party allocating valuable resources to the *firm* is not a minor non-monetary benefit.			
3.4	G	In relation to paragraph 3.1R(8) above, since the particular features of the fixed income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account *research* services.			
4	Inducements and research				
4.1	R	A *firm* must comply with COBS 2.3B, as modified by this section, when *executing* orders, or placing orders with other entities for execution, that relate to *financial instruments* for, or on behalf of, the *fund*.			
	General modifications				
4.2	R	The application provision in COBS 2.3B.1R (Application) and associated *guidance* in COBS 2.3B.2G do not apply.			
4.3	R	Where COBS 2.3B applies to a *firm*, the following modifications apply:			
		(1)	in COBS 2.3B.3R:		
			(a)	the reference to "providing *investment services* or *ancillary services* to *clients*" is to be construed as a reference to "*executing* orders, or placing orders with other entities for execution, that relate to *financial instruments* for, or on behalf of, the *fund*"; and	
			(b)	the reference to "COBS 2.3A.5R, COBS 2.3A.15R or COBS 2.3A.16R" is to be construed as a reference to COBS 18 Annex 1 2.1R ;	
		(2)	in COBS 2.3B.4R(1)(a), the reference to "third party research in respect of *investment services* rendered to its *clients*" is to be construed as a reference to "third party *research* in respect of *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*";		
		(3)	in COBS 2.3B.11R(3)(b)(ii), the reference to "the *firm's* policy for using third party *research* established under COBS 2.3B.12R" is to be construed as a reference to "the *firm's* written statement made in accordance with COBS 18 Annex 1 4.8R";		
		(4)	in COBS 2.3B.22G:		
			(a)	the reference to "COBS 2.3A.19R or COBS 2.3A" is to be construed as a reference to "COBS 18 Annex 1 3.1R or COBS 18 Annex 1 3.2G"; and	
			(b)	the reference to "COBS 2.3A.15R or COBS 2.3A" is to be construed as a reference to "COBS 18 Annex 1 2.1R"; and	
		(5)	in COBS 2.3B.24G, the reference to COBS 11.2A is to be construed as a reference to:		
			(a)	COBS 11.2 for *small authorised UK AIFMs*, *residual CIS operators*, and *full-scope UK AIFMs*; and	
			(b)	COBS 11.2B for *UCITS management companies*.	
4.4	R	COBS 2.3B.8R(1) and the reference to "agreeing the *research* charge with its *clients*" in COBS 2.3B.4R(2)(a) only apply if the *fund* has its own *governing body* which is independent of the *firm*.			
4.5	G	(1)	An example of a *fund* that has its own *governing body* which is independent of the *firm* is a *fund* that is a *body corporate* where the *firm* is not a *director* of the *fund*.		

		(2)		An example of a *fund* that does not have its own *governing body* which is independent of the *firm* is a *fund* that is a *body corporate* where the *firm* is the sole *director* of the *fund*.
4.6	G	In accordance with COBS 18.5.3R(1), COBS 18.5A.5R and COBS 18.5B.4R(1), references to *client* are to be construed as references to any *fund* in respect of which the *firm* is acting or intends to act.		
	Disapplication of disclosure provisions			
4.7	R	The following provisions do not apply and references to them in COBS 2.3B are to be ignored:		
		(1)	COBS 2.3B.5R;	
		(2)	COBS 2.3B.6G;	
		(3)	COBS 2.3B.8R(2);	
		(4)	COBS 2.3B.9G;	
		(5)	COBS 2.3B.12R; and	
		(6)	COBS 2.3B.20R.	
	Prior disclosure of the research account to investors			
4.8	R	A *firm* using a *research* payment account must set out in writing:		
		(1)	how the *firm* will comply with the elements of COBS 2.3B.4R(4);	
		(2)	how *research* purchased through the *research* payment account may benefit the *fund*, taking into account its investment objective, policy and strategy;	
		(3)	the approach the *firm* will take to allocate the costs of research fairly among the *funds* it manages;	
		(4)	the manner in which, and the frequency at which, the *research* charge will be deducted from the assets of the *fund*; and	
		(5)	a statement as to where up-to-date information on the matters covered in COBS 18 Annex 1 4.11R can be obtained.	
4.9	R	An *authorised fund manager* of an *authorised fund* must publish the information in paragraph 4.8 in the *fund's prospectus*.		
4.10	G	(1)	A *full-scope UK AIFM* of an *unauthorised AIF* may wish to publish the information in paragraph 4.8 with the information to be made available about *AIFs* in accordance with FUND 3.2.2R(9) (Prior disclosure of information to investors).	
		(2)	A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* may wish to publish the information in paragraph 4.8 with the information to be made available about *AIFs* in accordance with COBS 18.5.5R (Scheme documents for an unauthorised *fund*).	
4.11	R	(1)	A *firm* using a *research* payment account must publish:	
			(a)	the budgeted amount for *research*; and
			(b)	the amount of the estimated *research* charge for each *fund*.
		(2)	a *firm* must not increase its *research* budget or *research* charge unless it has provided clear information about the increase in good time before it is to take effect.	
		(3)	The information in (1) and (2) must be made available to investors and potential investors in the *fund*.	
	Periodic disclosure of the research payment account to investors			
4.12	R	A *firm* using a *research* payment account must, for each *fund* it manages, provide information to investors on the total costs the *fund* has incurred for third-party *research* in the most recent annual accounting period.		

4.13	R	An *authorised fund manager* of an *authorised fund* must publish the information in paragraph 4.12 in the annual long report of the authorised *fund*.
4.13	G	A *full-scope UK AIFM* of an *unauthorised AIF* may wish to publish the information in paragraph 4.12 with the information to be made available about *AIFs* in accordance with FUND 3.3 (Annual report of an AIF).
4.14	R	A *firm* using a *research* payment account must, on request, make available a summary of the following information to investors for the most recent annual accounting period: (1) the providers paid from the account; (2) the total amount each provider was paid; (3) the benefits and services received by the *firm*; and (4) how the total amount spent from the account compares to the budget set by the *firm*, noting any rebate or carry-over if residual monies are held in the account.

Record keeping: client orders and transactions

1	Application			
1.1	R	This section applies to:		
		(1)	a *firm* in respect of non-*MiFID* business related to commodity derivative instruments;	
		(2)	a *small authorised UK AIFM* and a *residual CIS operator*;	
		(3)	an *OPS firm* when it carries on business which is not *MiFID or equivalent third country business*; and	
		(4)	an *authorised professional firm* with respect to activities other than *non-mainstream regulated activities*.	
1.2	G	In accordance with COBS 18.5.3R(1), references to *client* in relation to a *small authorised UK AIFM* or a *residual CIS operator* are to be construed as references to any *fund* in respect of which the *firm* is acting or intends to act.		
2	Record keeping of client orders and decisions to deal			
2.1	R	(1)	A *firm* must immediately make a record of the details in (2), to the extent they are applicable to the order or decision to deal in question, in relation to:	
			(a)	every order received from a *client*;
			(b)	every decision to deal taken in providing the service of *portfolio management*; and
			(c)	for a *small authorised UK AIFM* and *residual CIS operator*, every decision to deal taken in managing *financial instruments* held for or within a *fund*.
		(2)	The details referred to in (1) are:	
			(a)	the name or other designation of the *client*;
			(b)	the name or other designation of any relevant *person* acting on behalf of the *client*;
			(c)	the details specified in points (3), (4), and in points (5) to (8), of the table in 4.1;
			(d)	the nature of the order if other than buy or sell;
			(e)	the type of the order;
			(f)	any other details, conditions and particular instructions from the *client* that specify how the order must be carried out; and
			(g)	the date and exact time of the receipt of the order, or of the decision to deal by the *firm*.
3	Record-keeping of transactions			
3.1	R	Immediately after executing a *client* order, or, in the case of *firms* that transmit orders to another *person* for *execution*, immediately after receiving confirmation that an order has been *executed*, *firms* must record the following details of the transaction in question:		
		(1)	the name or other designation of the *client*;	
		(2)	the details specified in points (1) to (10) of the table in 4.1R;	

		(3)	the total price, being the product of the unit price and the quantity;	
		(4)	the nature of the transaction if other than buy or sell; and	
		(5)	the natural person who *executed* the transaction or who is responsible for the *execution*.	
3.2	R	If a *firm* transmits an order to another *person* for *execution*, the *firm* must immediately record the following details after making the transmission:		
		(1)	the name or other designation of the *client* whose order has been transmitted;	
		(2)	the name or other designation of the *person* to whom the order was transmitted;	
		(3)	the terms of the order transmitted; and	
		(4)	the date and exact time of transmission.	
4	Details to be recorded			
4.1	R	(1)	Trading day	The trading day on which the transaction was executed.
		(2)	Trading time	The time at which the transaction was executed, reported in the local time of the *competent authority* to which the transaction will be reported, and the basis in which the transaction is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
		(3)	Buy/sell indicator	Identifies whether the transaction was a buy or sell from the perspective of the reporting *firm* or, in the case of a report to a *client*, of the *client*.
		(4)	Instrument identification	This must consist of: a unique code to be decided by the *competent authority* (if any) to which the report is made identifying the *financial instrument* which is the subject of the transaction; and if the *financial instrument* in question does not have a unique identification code, the name of the instrument or, in the case of a *derivative* contract, the characteristics of the contract.
		(5)	Unit price	The price per *security* or *derivative* contract excluding *commission* and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
		(6)	Price notation	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt the price is expressed as a percentage, that percentage must be included.
		(7)	Quantity	The number of units of the *financial instruments*, the nominal value of bonds, or the number of *derivative* contracts included in the transaction.
		(8)	Quantity notation	An indication as to whether the quantity is the number of units of *financial instruments*, the nominal value of bonds or the number of *derivative* contracts.
		(9)	Counterparty	Identification of the counterparty to the transaction. (a) Where the counterparty is an *investment firm*, that identification must consist of a unique code for that

			firm, to be determined by the *competent authority* (if any) to which the report is made; where the counterparty is a *regulated market*, an *MTF* or an entity acting as its central counterparty, the unique harmonised identification code for that market, *MTF* or entity acting as central counterparty, as specified in the list published by the *competent authority* of the home Member State of that entity.
			(b) Where the counterparty is not an *investment firm*, a *regulated market*, an *MTF* or an entity acting as central counterparty, it should be identified as 'customer/client' of the *investment firm* which executed the transaction.
	(10)	Venue identification	Identification of the venue where the transaction was executed. That identification must consist of: where the venue is a *trading venue*, its unique harmonised identification code; otherwise, the code 'OTC'.

Chapter 19

Pensions supplementary provisions

19.1 Pension transfers, conversions, and opt-outs

[**Note**: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf]

Application

19.1.-1 R [deleted]

19.1.-1A R Except where a *firm* is providing *abridged advice* (see COBS 19.1A), this section applies to a *firm* which:

(1) gives *advice on pension transfers, pension conversions and pension opt-outs* to a *retail client*; or

(2) arranges pension transfers, *pension conversions* or *pension opt-outs*,

in relation to:

(3) a *pension transfer*;

(4) a *pension conversion*; or

(5) a *pension opt-out* from a scheme with *safeguarded benefits* or potential *safeguarded benefits*.

19.1.-1B G A *firm* should comply with this section in order to give appropriate independent advice for the purposes of section 48 of the Pension Schemes Act 2015.

19.1.1-A R [deleted]

19.1.1 R [deleted]

Requirement for pension transfer specialist

19.1.1A R

(1) A *firm* must ensure that *advice on pension transfers, pension conversions and pension opt-outs* is given or checked by a *pension transfer specialist*.

(2) The requirement in (1) does not apply where the only *safeguarded benefit* involved is a *guaranteed annuity rate*.

Role of the pension transfer specialist when checking

19.1.1B G

When a *firm* uses a *pension transfer specialist* to check its proposed *advice on pension transfers, pension conversions and pension opt-outs*, it should ensure that the *pension transfer specialist* takes the following steps:

(1) checks the entirety and completeness of the advice;

(2) confirms that any *personal recommendation* is suitable for the *retail client* in accordance with the obligations in COBS 9.2.1R to 9.2.3R and including those matters set out at COBS 19.1.6G; and

(3) confirms in writing that they agree with the proposed advice before it is provided to the *retail client*, including any *personal recommendation*.

Personal recommendation for pension transfers and conversions

19.1.1C R

(1) A *firm* must make a *personal recommendation* when it provides *advice on conversion or transfer of pension benefits*.

(2) Before making the *personal recommendation* the *firm* must:

(a) determine the *proposed arrangement* with *flexible benefits* to which the *retail client* would move; and

(b) carry out the *appropriate pension transfer analysis* and produce the *transfer value comparator*.

(3) The requirement in (2)(b) does not apply if the only *safeguarded benefit* involved is a *guaranteed annuity rate*.

(4) The *firm* must take reasonable steps to ensure that the *retail client* understands how the key outcomes from the *appropriate pension transfer analysis* and the *transfer value comparator* contribute towards the *personal recommendation*.

(5) Prior to making a *personal recommendation* to effect a *pension transfer* or *pension conversion*, a *firm* must obtain evidence that the *client* can demonstrate that they understand the risks to them of proceeding with the *pension transfer* or *pension conversion*.

19.1.1D G

(1) COBS 9 contains suitability requirements which apply if a *firm* makes a *personal recommendation* in relation to *advice on conversion or transfer of pension benefits*.

(2) (a) COBS 9 requires a *firm* to obtain from the *client* necessary information for the *firm* to be able to make a recommendation.

The necessary information includes ensuring that the *client* has the necessary experience and knowledge to understand the risks involved in the transaction. If a *client* does not understand the risks and/or the *firm* does not have evidence that the *client* can demonstrate their understanding, then it is likely not to be appropriate, under the ■ COBS 9 requirements, to make a recommendation to transfer or convert.

(b) The *firm* should make a clear record of the steps it has taken to satisfy itself on reasonable grounds that it has adequate evidence of the *client's* demonstration of their understanding of the risks.

(3) When a *firm* is obtaining evidence as to whether the *client* can demonstrate that they understand the risks involved in the *pension transfer* or *pension conversion*, it should tailor its approach according to the experience, financial sophistication and/or vulnerability of each individual *client*.

Appropriate pension transfer analysis

19.1.2 R [deleted]

19.1.2A R [deleted]

19.1.2B R To prepare an appropriate transfer analysis a *firm* must:

(1) assess the benefits likely to be paid and options available under the *ceding arrangement*;

(2) compare (1) with those benefits and options available under the *proposed arrangement*;

(3) where the *proposed arrangement* is a *personal pension scheme*, *stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme*, and a *qualifying scheme* is available to the *retail client*, compare the benefits and options available under the *proposed arrangement* with the benefits and options available under the *default arrangement* of the *qualifying scheme*; and

(4) undertake the analysis in (1), (2) and (3) in accordance with ■ COBS 19 Annex 4A and ■ COBS 19 Annex 4C.

19.1.2C R ■ COBS 19.1.1-AR and ■ COBS 19.1.2BR do not preclude a *firm* from preparing other forms of the analysis (for example, stochastic cashflow modelling) which are relevant to making a *personal recommendation* to the *retail client*, as long as projected outcomes at the 50th percentile are no less conservative than if the analysis had been prepared in accordance with ■ COBS 19 Annex 4A and ■ COBS 19 Annex 4C.

19.1.2D G (1) This *guidance* applies if a *firm* presents information in the *appropriate pension transfer analysis* which considers the impact of:

(a) the Pension Protection Fund and the *FSCS*; or

scheme funding or employer covenants.

(2) If a *firm* presents the information in (1) it should, in accordance with *Principle* 7 and the *fair, clear and not misleading rule*, do so in a way that is balanced and objective.

(3) If a *firm* does not have specialist knowledge in assessing the impact of (1)(a) or 1(b), it should consider not including the information.

19.1.2E G

(1) This *guidance* applies if a *firm* presents information in the *appropriate pension transfer analysis*:

(a) that contains an indication of future performance; and

(b) is produced by a financial planning tool or cash flow model that uses different assumptions to those shown in the *key features illustration* for the *proposed arrangement*.

(2) A *firm* presenting the information in (1) should explain to the *retail client* why different assumptions produce different illustrative financial outcomes.

19.1.3 G [deleted]

Transfer value comparator

19.1.3A R

(1) To prepare a *transfer value comparator*, a *firm* must compare the transfer value offered by the *ceding arrangement* with the estimated value needed today to purchase the *future income benefits* available under the *ceding arrangement* using a *pension annuity* (calculated in accordance with ■ COBS 19 Annex 4B and ■ COBS 19 Annex 4C).

(2) The *firm* must provide the *transfer value comparator* to the *retail client* in a durable medium using the format and wording in ■ COBS 19 Annex 5 and using the notes set out in ■ COBS 19 Annex 5 1.2R.

(3) When the *retail client* has passed the normal retirement age of the *ceding arrangement*, the *firm* must provide a *transfer value comparator* applying the retirement age assumed in the calculation of the transfer value.

(4) Where the *ceding arrangement* allows the *retail client* to take their benefits at an age below the scheme's normal retirement age, with no reduction for early payment and where no consent is required, then the *firm* must provide a *transfer value comparator* assuming that the *retail client* will retire at this age.

Guidance on estimated transfer value

19.1.3B G

If a *firm* gives *advice on conversion or transfer of pension benefits* to a *retail client* under circumstances where the *ceding arrangement* is expected to be changed, or replaced by another scheme, the *firm* should:

(1) prepare a provisional *appropriate pension transfer analysis* and *transfer value comparator* based on the information related to the changed or replacement scheme;

(2) make reasonable assumptions about the changed or replacement scheme where the benefits are uncertain; and

(3) set out in a provisional *suitability report* any assumptions and uncertainties to the *retail client*, which should clearly set out that the *personal recommendation* can only be finalised once the transfer value and changed or replacement arrangements are certain.

19.1.4 R [deleted]

19.1.4A E [deleted]

19.1.4B R [deleted]

19.1.5 R [deleted]

Guidance on assessing suitability

19.1.6 G

(1) The *guidance* in this section relates to the obligations to assess suitability in COBS 9.2.1R to 9.2.3R.

(2) When a *firm* is making a *personal recommendation* for a *retail client* who is, or is eligible to be, a member of a *pension scheme* with *safeguarded benefits* and who is considering whether to transfer, convert or opt-out, a *firm* should start by assuming that a transfer, conversion or opt-out will not be suitable.

(3) A *firm* should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the *retail client's* best interests.

(4) To demonstrate (3), the factors a *firm* should take into account include:

(a) the *retail client's* intentions for accessing pension benefits;

(b) the *retail client's* attitude to, and understanding of the risk of giving up *safeguarded benefits* (or potential *safeguarded benefits*) for *flexible benefits*, taking into account the following factors:

(i) the risks and benefits of staying in the ceding arrangement;

(ii) the risks and benefits of transferring into an arrangement with *flexible benefits*;

(iii) the *retail client's* attitude to certainty of income in retirement;

(iv) whether the *retail client* would be likely to access funds in an arrangement with *flexible benefits* in an unplanned way;

(v) the likely impact of (iv) on the sustainability of the funds over time;

(vi) the *retail client's* attitude to and experience of managing investments or paying for *advice on investments* so long as the funds last; and

(vii) the *retail client's* attitude to any restrictions on their ability to access funds in the *ceding arrangement*;

(c) the *retail client's* attitude to, and understanding of investment risk;

(d) the *retail client's* realistic retirement income needs including:

(i) how they can be achieved;

(ii) the role played by *safeguarded benefits* (or potential *safeguarded benefits*) in achieving them; and

(iii) the consequent impact on those needs of a transfer, conversion or opt-out, including any trade-offs; and

(e) alternative ways to achieve the *retail client's* objectives instead of the transfer, conversion or opt-out.

(5) If a *firm* uses a risk profiling tool or software to assess a *retail client's* attitude to the risk in (4)(b) it should:

(a) check whether the tool or software is capable of taking into account at least those factors listed in (4)(b)(i) to (vii); and

(b) ensure that those factors which are not included are factored into the *firm's* assessment of the *client's* attitude to risk.

(6) When a *firm* asks questions about a *retail client's* attitude to the risk in 4(b) it should consider the *rules* on communicating with *clients* (■ COBS 4), which require a *firm* to ensure that a communication is fair, clear and not misleading.

(7) Where a *qualifying scheme* is available to the *retail client*, a *firm* considering making a *personal recommendation* to effect a *pension transfer* to a *personal pension scheme*, *stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme*:

(a) should start by assuming that it will not be as suitable as a transfer to the *default arrangement* of an available *qualifying scheme*; and

(b) will need to be able to demonstrate clearly that, as at the time of the *personal recommendation*, it is more suitable than a transfer to the *default arrangement* of an available *qualifying scheme*.

(8) For the purposes of (7):

(a) a *qualifying scheme* is available to the *retail client* where it accepts transfers from other schemes into its *default arrangement*; and

(b) where more than one *qualifying scheme* is available to the *retail client*, the *firm* should consider the available *qualifying scheme* that the *retail client* most recently joined, but may, in addition, also consider any of the other *qualifying schemes* available to the *retail client*.

(9) To demonstrate (7)(b) the *firm* may, subject to (10), take into account one or more of the following considerations:

(a) the *retail client* provides evidence of experience at making active investment choices as a self-investor or as an advised investor (except in relation to investments in the *default arrangement* of a *qualifying scheme* or in a mortgage endowment policy or similar product);

(b) where the *retail client* wishes to access the funds within 12 *months* of entering into pension decumulation and the *qualifying*

scheme does not offer the *retail client* a decumulation option that would enable the *retail client* to achieve their desired outcome.

(10) In taking into account the considerations in (9), as well as any other considerations that the *firm* may decide to take into account when demonstrating 7(b), the *firm* should also consider:

(a) whether those considerations are so important to the *client* as to outweigh other considerations in favour of the *default arrangement* of the available *qualifying scheme*; and

(b) why the outcome sought by transferring to a *personal pension scheme*, *stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme* cannot be achieved by transferring to the *qualifying scheme*.

(11) The presence of one or more of the following circumstances should not be taken as sufficient to demonstrate that the *personal recommendation* in (7) is suitable:

(a) one of the *retail client's* objectives is to have access to a wider range of investment options than available under the *default arrangement* of the *qualifying scheme*;

(b) the transfer is to take place more than 12 *months* before the *retail client* enters into pension decumulation; and/or

(c) the *retail client* will enter into pension decumulation within the next 12 *months*, but the *retail client* has not yet decided whether or how they will access their funds.

Working with another adviser

19.1.6A G

(1) This *guidance* relates to the obligations to assess suitability in ■ COBS 9.2.1R to ■ 9.2.3R.

(2) Paragraphs (3) and (4) apply in the following situations:

(a) where two or more *firms* are involved in providing both *advice on pension transfers, pension conversions and pension opt-outs* and *advice on investments* in relation to the same transaction; and

(b) where two or more *employees* within the same *firm* are involved in providing both *advice on pension transfers, pension conversions and pension opt-outs* and *advice on investments* in relation to the same transaction.

(3) In such situations, *firms* should work together (or ensure their *employees* work together) to:

(a) obtain information from the *retail client* under ■ COBS 9.2.2R(1) that is sufficient to inform both the *advice on pension transfers, pension conversions and pension opt-outs* and the *advice on investments*; and

(b) obtain information from the *retail client* under ■ COBS 9.2.2R(2) about the client's preferences regarding risk taking and their risk profile that covers both the risk in ■ COBS 19.1.6R(4)(b) and the risk in ■ COBS 19.1.6R(4)(c).

(4) In such situations, the *firm(s)* providing the *advice on investments* in relation to the proposed transaction should ensure that (where

relevant) the advice takes into account the impact of any loss of *safeguarded benefits* (or potentially *safeguarded benefits*) on the *retail client's* ability to take on investment risk.

19.1.7 G [deleted]

19.1.7A G [deleted]

19.1.7B G [deleted]

Arranging without making a personal recommendation

19.1.7C R If a *firm* arranges a *pension transfer*, *pension conversion* or *pension opt-out* for a *retail client* without making a *personal recommendation* in relation to the *pension transfer*, *pension conversion* or *pension opt-out* it must:

(1) make a clear record of the fact that the *firm* has not given that *personal recommendation* to the *client*;

(1A) where the *pension transfer* or *pension conversion* is within the scope of the requirement in section 48 of the Pension Schemes Act 2015:

(a) not proceed with the arrangements until it has received confirmation, from the *firm* that gave the advice to the *retail client*, that the *retail client* has received a *personal recommendation* in accordance with the requirements of ■ COBS 19.1 (and that it was not *abridged advice*); and

(b) if the client has received a *personal recommendation*, ask whether or not the recommendation was to transfer or convert; and

(c) retain clear records showing evidence of (a) and (b);

(1B) where the recommendation in (1A) was not to transfer or convert the *retail client's* subsisting rights in respect of *safeguarded benefits*, the *firm arranging* the *pension transfer* or *pension conversion* must:

(a) warn the *retail client* that they are acting against advice not to transfer or convert;

(b) ask the *retail client* whether they understand the consequences of acting against advice;

(c) where the *retail client* does not understand the consequences of acting against advice, refuse to arrange the *pension transfer* or conversion and instead refer the *retail client* back to the *firm* that advised them not to transfer or convert for an explanation of that advice; and

(d) retain a record of the communications with the *retail client* that evidence compliance with the requirements in (a) to (c);

(2) retain the records in (1), (1A) and (1B) indefinitely.

19.1.7D G Where the advice referred to in ■ COBS 19.1.7CR(1A) was *abridged advice*, the *firm* being asked to arrange the transfer or conversion should not ask the advising *firm* for confirmation of the *abridged advice* given. The *firm* is not

permitted to arrange the relevant *pension transfer* or *pension conversion* where the advice given was *abridged advice*.

19.1.7E R Where the *firm* that has given advice to a *retail client* is asked by a *firm* arranging a *pension transfer* or *pension conversion* that is within the scope of the requirement in section 48 of the Pension Schemes Act 2015 to:

(a) provide a confirmation that the *retail client* has received a *personal recommendation* in accordance with the requirements of ■ COBS 19.1 (and that it was not *abridged advice*); and

(b) if the client has received a personal recommendation, confirm whether or not the recommendation was to transfer or convert,

the advising *firm* must provide the requested information to the *firm* arranging a *pension transfer* or *pension conversion* as soon as reasonably practicable.

Suitability reports

19.1.8 G If a *firm* provides a *suitability report* to a *retail client* in accordance with ■ COBS 9.4.2AR it should include:

(1) a summary of the advantages and disadvantages of its *personal recommendation*;

(2) an analysis of the financial implications (if the recommendation is to opt-out);

(2A) a summary of the key outcomes from the *appropriate pension transfer analysis* (if the recommendation is to transfer or convert); and

(3) a summary of any other material information.

19.1.9 G If a *firm* proposes to advise a *retail client* not to proceed with a *pension opt-out*, it should give that advice in writing.

19.1.9A R Prior to finalising the *firm's personal recommendation*, a *firm* seeking evidence that the *client* can demonstrate their understanding of the risks in accordance with ■ COBS 19.1.1CR(5) must:

(1) make a clear record of either:

(a) the evidence showing that the *client* demonstrated that they understood the risks involved in effecting a *pension transfer* or *pension conversion* and the steps taken by the *firm* to obtain that; or

(b) if the *firm* could not obtain evidence that the *client* could demonstrate that understanding and the *firm* did not change to a recommendation not to transfer, the steps taken by the *firm* to obtain the evidence and clear evidence and explanation of how the *firm* satisfied itself on reasonable grounds that it was still suitable to continue to make the same *personal recommendation*; and

(2) retain the records in (1) indefinitely.

The statutory advice requirement

19.1.10 G

(1) Where a *firm* has advised a *retail client* in relation to a *pension transfer* or *pension conversion* and the *firm* is asked to confirm this for the purposes of section 48 of the Pension Schemes Act 2015, then the *firm* should provide such confirmation as soon as reasonably practicable.

(2) The *firm* should provide the confirmation regardless of whether it advised the *client* to proceed with a *pension transfer* or *pension conversion* or not.

Triage services

19.1.11 G

The table in ■ PERG 12 Annex 1G includes examples of when a *firm* is and is not *advising on conversion or transfer of pension benefits* when it has an initial "triage" conversation with a potential customer. The purpose of triage is to give the customer sufficient information about *safeguarded benefits* and *flexible benefits* to enable them to make a decision about whether to take *advice on conversion or transfer of pension benefits*.

19.1A Abridged advice on pension transfers and pension conversions

[**Note**: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf]

Application

19.1A.1 R This section applies to a *firm* which gives *abridged advice* in relation to a *pension transfer* or *pension conversion* to a *retail client*.

19.1A.2 R A *firm* may not give *abridged advice* to the extent that the *safeguarded benefits* involved are *guaranteed annuity rates*.

Options when providing abridged advice

19.1A.3 R A *firm* giving a *retail client abridged advice* must either:

(1) make a *personal recommendation* that the *client* remains in their *ceding arrangement*; or

(2) do all of the following:

(a) inform the *client* that they are unable to take a view on whether it is in the *client's* best interests to transfer or convert without undertaking *full pension transfer or conversion advice*, even when the firm considers that it may be in the *client's* best interests;

(b) check if the *client* wants the *firm* to provide *full pension transfer or conversion advice* and check that the *client* understands the associated cost; and

(c) (if the *firm* has reason to believe that the *client* is suffering from *serious ill-health* or experiencing *serious financial difficulty*) make the *client* aware of the implications for the level of *adviser charges* if the *client* proceeded to *full pension transfer or conversion advice*.

Guidance about proceeding from abridged advice to full pension transfer or conversion advice

19.1A.4 G This *guidance* applies where a *firm* has given *abridged advice* to a *retail client* and the *client* wishes to proceed to *full pension transfer or conversion advice*.

(1) Where the outcome of the *abridged advice* was a *personal recommendation* that the *client* remains in their *ceding arrangement*, the *FCA's* expectation is that in most cases the outcome of *full*

pension transfer or conversion advice will be a *personal recommendation* that the *client* remains in their *ceding arrangement*.

(2) Where the outcome was a statement that the *firm* was unable to take a view on whether it would be in the *client's* best interests to transfer or convert without undertaking *full pension transfer or conversion advice*, the *FCA's* expectation is that the outcome of *full pension transfer or conversion advice* could still be a *personal recommendation* that the *client* remains in their *ceding arrangement*.

Inability to provide confirmation for the purposes of section 48 of the Pension Schemes Act 2015

19.1A.5 R A *firm* must not provide a confirmation for the purposes of section 48 of the Pension Schemes Act 2015 unless it has provided *full pension transfer or conversion advice*.

Prohibition

19.1A.6 R A *firm* must not carry out *appropriate pension transfer analysis* and/or prepare a *transfer value comparator* and/or consider the *proposed arrangement* when providing *abridged advice* to a *retail client*.

Requirement to use a pension transfer specialist

19.1A.7 R A *firm* must ensure that *abridged advice* is given or checked by a *pension transfer specialist*.

19.1A.8 G Where a *firm* uses a *pension transfer specialist* to check its proposed *abridged advice* it should have regard to the *guidance* in COBS 19.1.1BG.

Relevant guidance about assessing suitability

19.1A.9 G If a *firm* provides a suitability report to a *retail client* in accordance with COBS 9.4.2AR it should include (in addition to the requirements in COBS 9.4):

(1) a summary of the advantages and disadvantages of its *personal recommendation*; and

(2) a summary of any other material information that would assist the client in understanding the basis of the advice.

19.1A.10 R A *firm* must not arrange a transaction for a *client* where only *abridged advice* has been given.

19.1A.11 G (1) This *guidance* relates to a *firm's* obligations to assess suitability in accordance with COBS 9.2.1R to 9.2.3R.

(2) A *firm* should start by assuming that a *pension transfer* or *pension conversion* will not be suitable.

(3) For the purposes of the provision of *abridged advice*, the factors a *firm* should take into account include:

(a) the *retail client's* intentions for accessing pension benefits;

(b) the *retail client's* attitude to, and understanding of the risk of, giving up *safeguarded benefits* for *flexible benefits*, taking into account the following factors:

(i) the risks and benefits of staying in the *ceding arrangement*;

(ii) the risks and benefits of transferring from the *ceding arrangement* into an arrangement with *flexible benefits*;

(iii) the *retail client's* attitude to certainty of income in retirement;

(iv) whether the *retail client* would be likely to access funds in an arrangement with *flexible benefits* in an unplanned way;

(v) the likely impact of (iv) on the sustainability of the funds over time;

(vi) the *retail client's* attitude to, and experience of, managing *investments* or paying for *advice on investments* so long as the funds last; and

(vii) the *retail client's* attitude to any restrictions on their ability to access funds in the *ceding arrangement*;

(c) the *retail client's* realistic retirement income needs including:

(i) how they can be achieved;

(ii) the role played by *safeguarded benefits* in achieving them; and

(iii) the consequent impact on those needs of a *pension transfer* or *pension conversion*, including any trade-offs in broad terms;

(d) alternative ways to achieve the *retail client's* objectives instead of the *pension transfer* or *pension conversion*;

(e) the *retail client's* attitude to, and understanding of, investment risk;

(4) If a *firm* uses a risk profiling tool or software to assess a *retail client's* attitude to the risk in (3)(b) it should:

(a) check whether the tool or software is capable of taking into account at least those factors listed in (3)(b)(i) to (vii); and

(b) ensure that those factors which are not included are factored into the *firm's* assessment of the *client's* attitude to risk.

(5) When a *firm* asks questions about a *retail client's* attitude to the risk in 3(b) it should ensure they are fair, clear and not misleading in accordance with ■ COBS 4.

Guidance about charging for abridged advice

19.1A.12 G

(1) A *firm* may provide *abridged advice* to a *retail client* free of charge. However, if they do, and the conclusion is that they are unable to give a *personal recommendation* without carrying out *full advice on pension transfers or conversions*, a *firm* will need to ensure it is able to demonstrate how it still complies with *Principle* 8 (Conflicts of interest), and the rules on contingent charging (■ COBS 19.1B).

(2) A *firm* that charges a *client* twice for what is, in essence, the same service is likely to be acting inconsistently with *Principle* 2, *Principle* 6

and *Principle* 8. As a result, a *firm* will be expected to offset the *adviser charges* paid by a *retail client* for the provision of *abridged advice* from the amount it would have otherwise charged that *retail client* for the provision of *full pension transfer or conversion advice*.

19.1B Ban on contingent charging for pension transfers and conversions

[**Note**: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf]

Application

19.1B.1 R This section applies to a *firm* in relation to the provision of:

(1) *advice on conversion or transfer of pension benefits* except where:

(a) the only *safeguarded benefit* involved is a *guaranteed annuity rate*; or

(b) it is *abridged advice*;

(2) *investment advice* or other services in connection with a *pension transfer* or *pension conversion* (including, but not limited to, implementing and arranging a *pension transfer* or *pension conversion*);

(3) ongoing advice or other services in relation to rights or interests in a *non-DB pension scheme* derived in whole or part from a *pension transfer* or *pension conversion*; or

(4) any related services.

Purpose

19.1B.2 G The purpose of this section is to ensure that *firms'* charging structures, either individually or taken together with other *associates*, do not create any potential for a conflict of interest relating to, or an incentive to recommend or effect, a *pension transfer* or a *pension conversion* to a *retail client*.

Ban on contingent charging

19.1B.3 R Except as specified in COBS 19.1B.9(1) or (2), a *firm* must ensure that both the methodology for calculating any part of, and the total value of, the *firm's adviser charges*, *employer or trustee funded pension advice charge* or *remuneration* do not vary depending on whether or not:

(1) the *firm* makes a *personal recommendation* to a *retail client* to effect a *pension transfer* or a *pension conversion*; and/or

(2) the *retail client* effects a *pension transfer* or a *pension conversion*; and/or

(3) (in relation to ongoing advice or other services in relation to the *retail client's* rights or interests in a *non-DB pension scheme*) the

rights or interests in the *non-DB pension scheme* include sums derived from a *pension transfer* or a *pension conversion*.

19.1B.4 R Where:

(1) one *firm* carries out multiple services for a particular *retail client*; and/or

(2) a *firm* and one or more *firms* that are its *associates* (including any other *firm* providing *investment advice* in relation to a *proposed arrangement*) are involved then,

■ COBS 19.1B.3R applies to the *firm* in relation to both the methodology for calculating any part of, and the total value of, the *adviser charges*, *employer or trustee funded pension advice charge* and/or *remuneration* of the *firm* and, where applicable, any of those *associates*.

19.1B.5 R

(1) A *firm* must not allow itself to be part of any charging structure or arrangement (operated by the *firm* or any *associate*) which could create a potential incentive to any *firm* or any *firm* that is its *associate* to recommend or arrange a *pension transfer* or a *pension conversion* to or for a *retail client* or otherwise could circumvent the *rules* in this section.

(2) This includes charging structures in relation to the pricing of other goods or services provided to the *client* or a connected *person* at any time by any *firm* involved in the *pension transfer* or *pension conversion* arrangements, or by any *associate* of the *firm*.

Examples of unacceptable practices

19.1B.6 G The following *evidential provisions* provide examples of charging arrangements the *FCA* considers will breach the *rules* in this section.

19.1B.7 E

(1) A *firm* should not charge and/or receive *adviser charges*, *employer or trustee funded pension advice charges* and/or *remuneration*, that are higher, when taken together, if the recommendation is to effect a transfer or conversion than if the recommendation is not to do so.

(2) A *firm* and/or any of its *associates* that are *firms* should not charge and/or receive *remuneration* of a higher amount for their ongoing advice or services in relation to the funds in a *non-DB pension scheme* than they charge or receive where the funds are not derived from a *pension transfer* or a *pension conversion*.

(3) A *firm* should not purport to charge a *retail client* the same for advice that recommends a *pension transfer* or a *pension conversion* as it would for advice that does not recommend a transfer or conversion, but not take reasonable steps to enforce payment of the full amount of the charge by the *retail client* where the advice is not to transfer or convert.

(4) A *firm* should not charge a lower amount for any other services provided, or to be provided, by the *firm* or an *associate* to the *retail client* or, anyone connected to the *retail client*, if the *client* is advised not to transfer or convert.

(5) A *firm* should not subsequently vary its *adviser charges*, *employer or trustee funded pension advice charge* and/or *remuneration* for advice and/or *related services* so that in practice they become dependent on the outcome of a *personal recommendation* or whether the *retail client* effects a *pension transfer* or a *pension conversion*.

(6) A *firm* should not charge less in relation to *full pension transfer or conversion advice* (including charges for *abridged advice*) than it would do if it provided *investment advice* on the investment of the same size of pension funds but which did not include funds from a *pension transfer* or a *pension conversion*. This does not apply in relation to *full pension transfer or conversion advice* where part of the charge is payable by an *employer or trustee funded advice charge*.

(7) A *firm* should not undertake some services related to *full pension transfer or conversion advice*, such as parts of *appropriate pension transfer analysis* or *transfer value comparator*, then decline to advise further and not charge for the work undertaken.

(8) Contravention of:

(a) either of (1) or (2) may be relied upon as tending to establish contravention of ■ COBS 19.1B.3R; and

(b) any of (3) to (7) may be relied upon as tending to establish contravention of ■ COBS 19.1B.5R.

Guidance about charging for full pension transfer or conversion advice

19.1B.8 G

(1) A *firm* may provide *full pension transfer or conversion advice* to a *retail client* free of charge in exceptional cases, even if they do not fall within the exceptions in ■ COBS 19.1B.9R(1) or ■ (2). This may be, for example, where the *firm* is acting entirely pro-bono on humanitarian grounds, or is helping a close family friend, where the *firm* can demonstrate that the *rules* on contingent charging in this chapter are not being breached. For example, where all of the related services provided (by the *firm* or any *associate*) are also free of charge. The *firm* will also need to show that the advice was free of charge irrespective of whether or not the advice results in a recommendation to transfer or convert.

(2) Where a *firm* has provided a *retail client* with *abridged advice* and with *full pension transfer or conversion advice*, it should charge the *retail client* taking into account the guidance in ■ COBS 19.1A.12G(2).

Exceptions to the ban on contingent charging

19.1B.9 R

A *firm* need not comply with ■ COBS 19.1B.3R or ■ COBS 19.1B.5R in relation to *full pension transfer or conversion advice* if it has satisfied itself, on reasonable grounds and based on adequate supporting evidence, that the *retail client* is unable to pay for *full pension transfer or conversion advice* without using funds that are not reasonably available, and is either:

(1) suffering from *serious ill-health*; or

(2) (a) experiencing *serious financial difficulty* or likely would be if they had to pay for *full pension transfer or conversion advice* on a non-contingent basis; and

(b) would be able to access their pension fund immediately after a *pension transfer* or a *pension conversion* has taken effect.

19.1B.10 R A *firm* that charges a *retail client* in relation to *full pension transfer or conversion advice* on a contingent basis in reliance on ■ COBS 19.1B.9R(1) or ■ (2), must ensure that the methodology for calculating, and the total value of, the *firm's* and any *associate's adviser charges*, *employer or trustee funded pension advice charge* or *remuneration* for that advice, any related service, and any ongoing advice or other services in relation to the *retail client's* rights or interests in a *non-DB pension scheme*, is not higher than if they had charged the *retail client* in relation to *full pension transfer or conversion advice* on a non-contingent basis.

19.1B.11 G A *client* is likely to meet the requirements for *serious ill-health* where:

(1) the *retail client* has a particular medical condition, as shown by reliable medical reports or records; and

(2) there are reputable sources of medical information to evidence that the medical condition in question results, in the majority of cases, in a life expectancy below age 75.

19.1B.12 G A *client* is likely to meet the requirement that they are unable to pay for *full pension transfer or conversion advice* without using funds that are not reasonably available where the amount of their reasonably available savings and investments is below the cost of *full pension transfer or conversion advice*.

19.1B.13 G The types of circumstances in which a *client* is likely to be able to show they are experiencing *serious financial difficulty* include where continuing to pay domestic bills and credit commitments is a heavy burden on the *client* and the *client* has missed payments for any credit commitments and/or any domestic bills in any three or more of the last six *calendar months*.

Examples of unacceptable reasons for relying on an exception to the ban on contingent charging

19.1B.14 G The following *evidential provisions* provide examples of what the *FCA* considers to be unacceptable reasons for relying on the *serious financial difficulty* and *serious ill health* exceptions and which, if relied on by a *firm*, the *FCA* considers will breach the *rules* in this section.

19.1B.15 E

(1) A *firm* should not be satisfied that a *client* meets the requirements for *serious ill-health* where a *client* is only able to demonstrate an expected reduced life expectancy due to lifestyle factors (for example smoking or drinking alcohol) and not a medical condition.

(2) A *firm* should not be satisfied that a *client* meets the requirements for *serious financial difficulty* where a *client* is experiencing *serious financial difficulties* because of incurring non-essential expenditure.

(3) A *firm* should not be satisfied that a *client* will be able to access their pension fund immediately after a *pension transfer* or *pension*

conversion (relevant to *serious financial difficulty*) unless the *client* has been able to demonstrate to the satisfaction of the *firm* the basis on which they would be able to access their pension fund immediately after a *pension transfer* or *pension conversion*.

(4) A *firm* should not be satisfied that a *client* is unable to pay for *full pension transfer or conversion advice* where a *client* is able to access reasonably available savings or investments to pay for *full pension transfer or conversion advice* but does not wish to access these to pay for advice.

19.1B.16 R Contravention of any of ■ COBS 19.1B.15E (1) to ■ (4) may be relied upon as tending to establish contravention of ■ COBS 19.1B.9R and therefore ■ COBS 19.1B.3R or ■ COBS 19.1B.5R.

Additional record-keeping requirements for a firm relying on an exception in COBS 19.1B.9R(1) or (2)

19.1B.17 R In addition to any other record-keeping requirements to which the *firm* is subject, a *firm* charging a *retail client* on a contingent basis in reliance on one of the exceptions in ■ COBS 19.1B.9R(1) or ■ (2) must make and retain indefinitely a record of the evidence it relied upon to satisfy itself that all the relevant requirements in ■ COBS 19.1B.9R were met in relation to the *retail client*.

19.2 Personal pensions, FSAVCs and AVCs

Financial promotions

19.2.1 G A *financial promotion* for a *FSAVC* should contain a prominent warning that, as an alternative an *AVC* arrangement exists, and that details can be obtained from the scheme administrator (if that is the case).

Suitability

19.2.2 R When a *firm* prepares a *suitability report* it must:

(1) (in the case of a *personal pension scheme*), explain why it considers the *personal pension scheme* to be at least as suitable as a *stakeholder pension scheme*;

(2) (in the case of a *personal pension scheme*, *stakeholder pension scheme* or *FSAVC*) explain why it considers the *personal pension scheme*, *stakeholder pension scheme* or *FSAVC* to be at least as suitable as any facility to make additional contributions to an *occupational pension scheme*, *group personal pension scheme* or *group stakeholder pension scheme* which is available to the *retail client*; and

(3) (in the case of a *pension transfer*, other than where the only *safeguarded benefit* involved is a *guaranteed annuity rate*, where the *proposed arrangement* is a *personal pension scheme*, *stakeholder pension scheme* or *defined contribution occupational pension scheme* that is not a *qualifying scheme*) explain why, at the time of the *personal recommendation*, it considers the *proposed arrangement* to be more suitable than the *default arrangement* of an available *qualifying scheme*.

19.2.3 R When a *firm* promotes a *personal pension scheme*, including a *group personal pension scheme*, to a group of *employees* it must:

(1) be satisfied on reasonable grounds that the scheme is likely to be at least as suitable for the majority of the *employees* as a *stakeholder pension scheme*; and

(2) record why it thinks the promotion is justified.

Attachment (or earmarking) orders

19.2.4 G A *firm* should take into account the existence of any attachment (or earmarking) orders in respect of a *client's personal pension scheme* or *stakeholder pension scheme*.

19.2.5 G

(1) An *operator* should ensure that it is aware of, and acts fully in accordance with, any attachment or earmarking orders made in respect of any members of that scheme by a court.

(2) In particular, an *operator* should be mindful of its obligations under an attachment order to give notices to other parties, including transferee *operators* and relevant former spouses, where relevant events occur, such as transfers and significant reductions in benefits.

(3) A *firm*, when advising a *client* in relation to a *personal pension scheme* or *stakeholder pension scheme*, or in relation to a *pension transfer* or *pension conversion*, should enquire as to whether an attachment order exists and take it into account accordingly.

19.3 Product disclosure to members of occupational pension schemes

19.3.1 R

(1) When a *firm* sells, *personally recommends* or arranges the payment of an *AVC* contribution by a member of an *occupational pension scheme* to be secured by a *packaged product* purchased by the scheme trustees, it must give the trustees sufficient information to pass to the relevant member for that member to be able to make informed comparisons between the *AVC* and any alternative *personal pension schemes* and *stakeholder pension schemes* available.

(2) This *rule* applies to an *AVC* where members' benefits are linked to the earmarked segments of a *life policy* or *scheme*, but it does not apply to an *AVC* where the trustees make pooled investments and have their own arrangements for allocating investment returns to determine members' *AVC* benefits.

19.4 Open market options

Definitions

19.4.1 R In this section:

(1) 'fact sheet' means the *MoneyHelper* fact sheet or a statement provided by a *firm* that gives materially the same information;

(1A) '*MoneyHelper* fact sheet' means the guide "Your pension: it's time to choose", available on https://www.moneyhelper.org.uk;

(2) 'intended retirement date' means:

(a) the date (according to the most recent recorded information available to the provider) when the scheme member intends to retire, or to bring the benefits in the scheme into payment, whichever is the earlier; or

(b) if there is no such date, the scheme member's state pension age;

(3) 'open market options' means the options available to a scheme member to access their pension savings on the open market;

(4) 'open market options statement' means the information specified in ■ COBS 19.4.6AR, provided in a *durable medium*, to assist the *retail client* to make an informed decision about their open market options;

(5) 'pension decumulation product' is a product used to access pension savings and includes:

(a) a facility to enable a *retail client* to make an *uncrystallised funds pension lump sum* payment;

(b) an option to take a *small lump sum payment*;

(c) a *drawdown pension*; and

(d) a *pension annuity*;

(6) 'pension savings' is the proceeds of the *retail client's personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity* contract or *pension buy-out contract*;

(7) 'reminder' is the requirement in ■ COBS 19.4.9R to remind the *retail client* about the open market options statement and the availability of *pensions guidance*;

(7A) 'retirement risk warnings' are the warnings required to be given to a *retail client* in accordance with ■ COBS 19.4.8ER(2);

(8) 'signpost' is the requirement in ■ COBS 19.4.16R to provide a written or oral statement encouraging a *retail client* to use *pensions guidance* or

to take regulated advice to understand their options at retirement; and

(9) 'single page summary document' is a *document* produced by a *firm* that contains the information specified in ■ COBS 19.4.6CR.

Application

19.4.2 R This section applies to a *firm* which operates a *retail client's personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity* contract or *pension buy-out contract*.

19.4.3 G This section specifies the circumstances where a *firm* must:

(1) provide a *retail client* with an open market options statement;

(2) signpost *pensions guidance*;

(3) provide information to enable a *retail client* to make an informed decision about how to access their pension savings;

(4) remind a *retail client* about their open market options; and

(5) provide appropriate warnings about the risks generally associated with the *retail client's* options for accessing their pension savings.

Purpose

19.4.4 G The purpose of this section is to ensure that *firms* provide *retail clients* with timely, relevant and adequate information:

(1) to enable them to make an informed decision about their options for accessing pension savings; and

(2) to encourage them to shop around.

Open market options statementWhen?

19.4.5 R [deleted]

19.4.5A R (1) A *firm* must give a *retail client* an open market options statement:

(a) within two *months* after the *client* reaches 50 years of age; and

(b) between four to ten weeks before the *client* reaches each birthday that is at five year intervals after the *client's* 50th birthday.

(c) [deleted]

(1A) The requirement in (1) does not apply if:

(a) the *firm* has given the *client* such a statement in the last 12 *months*; or

(b) the *client's* pension fund is fully crystallised; or

(c) the *firm* has received a request from the *client* for their pension fund to be paid by way of a *serious ill-health lump sum* and that request has not been rejected.

(2) A *firm* must also give a *retail client* an open market options statement:

(a) if the *client* asks a *firm* for a retirement quotation more than four *months* before the *client's* intended retirement date; or

(b) if a *firm* does not receive such a request for a retirement quotation, between four and six *months* before the *client's* intended retirement date; or

(c) if a *retail client* with open market options tells a *firm* that they are considering, or have decided:

to discontinue an *income withdrawal* arrangement; or

to take a further sum of money from their pension savings to exercise open market options; or

(d) if the *retail client* requests to access their pension savings for the first time, except where the *retail client* requests that their pension fund is paid to them by way of a *serious ill-health lump sum*;

(2A) The requirement in (2) does not apply if:

(a) the *firm* has given the *client* such a statement in the last 12 *months*; or

(b) the *firm* has received a request from the *client* for their pension fund to be paid by way of a *serious ill-health lump sum* and that request has not been rejected.

If after taking reasonable steps to comply with the requirements in (1) or (2) a *firm* has been unable to provide a *retail client* with an open market options statement, the *firm* must provide the statement in good time before it *sells* a pension decumulation product to the *client*.

(4) Where a *firm's* obligation to send an open market options statement is only dis-applied because of a *client's* request that their pension fund is paid to them by way of a *serious ill-health lump sum* (see ■ COBS 19.4.5AR(1A)(c) or ■ COBS 19.4.5AR(2A)(b)), but that request is subsequently rejected, a *firm* must send to the *client* an open market options statement within two *months* of the decision to reject.

Contents

19.4.6 R [deleted]

19.4.6A R

(1) An open market options statement given in accordance with ■ COBS 19.4.5AR(1)(a) must include:

(a) a single page summary document; and

(b) appropriate retirement risk warnings.

(2) All other open market options statements must include:

(a) a single page summary document;

(b) a fact sheet;

(c) appropriate retirement risk warnings;

(d) a statement about whether any guarantees apply and, if so, how they work; and

(e) any other information to enable the *retail client* to be able to make an informed decision about whether to exercise, or to decline to exercise, open market options.

Single page summary document

19.4.6B R

(1) The single page summary document must not exceed a single side of A4-sized paper when printed.

(2) The requirement in (1) does not apply if a *retail client* asks for the information to be provided in an accessible format and the fulfilment of that request will necessitate the use of more than a single side of A4-sized paper.

19.4.6C R

The single page summary document must include the following information:

(1) the *retail client's* name;

(2) the *retail client's* intended retirement date;

(3) the *firm's* name;

(4) if the *retail client* makes or receives employment-related contributions:

(a) the employer's name; and

(b) the amount that the employer and employee have contributed to the *retail client's* pension savings in the last year (if applicable);

(5) the current value of the *retail client's* pension savings;

(6) if relevant, a statement warning the *retail client* that the current value of their pension savings may be subject to early exit charges or other withdrawal charges when accessed;

(7) a statement about whether any guarantees apply and, if so, where to find out further information;

(8) any other relevant special features, restrictions, or conditions that apply, such as (for *with-profits funds*) any market value reduction conditions in place, and how to find out further information;

(9) if the document is required to be provided up to six *months* before the *retail client's* intended retirement date, a statement asking the *retail client* to consider whether they are saving enough to meet their needs at retirement;

(10) a clear and prominent statement about the availability of *pensions guidance* including:

(a) how to access the *pensions guidance* and its contact details;

(b) that *pensions guidance* can be accessed on the internet, telephone, or face to face;

(c) that *pensions guidance* is a free impartial service to help consumers to understand their options at retirement;

(d) a recommendation that the *client* seeks appropriate guidance or advice to understand their options at retirement; and

(e) the government logo and *pensions guidance* logo next to or above the statement.

19.4.6 G

19.4.7 G For the purpose of ■ COBS 19.4.6AR(2)(b) where a *firm* provides its own statement as the fact sheet, it should include materially the same information in the *MoneyHelper* fact sheet about:

(1) the following options for accessing pensions savings, even if they are not offered by the *firm*:

(a) pension annuity;

(b) drawdown pension; and

(c) uncrystallised funds pension lump sum payments;

(2) the main features, benefits and risk factors relevant to the options for accessing pensions savings, such as:

(a) tax implications;

(b) what happens in the event of the *client's* death;

(c) the loss of any guarantees;

(d) the *client's* state of health;

(e) the *client's* lifestyle choices;

(f) whether the *client* is married or has dependants; and

(g) sustainability of income over time;

(3) how to access financial advice and information about the different ways in which the *client* might be able to access their pension savings;

(4) the availability of free, impartial guidance from the *pensions guidance*; and

(5) the *client's* option to shop around, with an explanation of how they may do so.

19.4.8 R An open market options statement must not include *financial promotions* for a pension decumulation product.

Retirement risk warnings

19.4.8A G This section sets out the steps a *firm* must take to prepare and identify appropriate retirement risk warnings.

Step 1: prepare retirement risk warnings

19.4.8B R A *firm* must prepare the retirement risk warnings before providing the appropriate retirement risk warnings required by ■ COBS 19.4.6AR for the first time, and must also keep the warnings up to date.

19.4.8C R To prepare retirement risk warnings a *firm* must:

(1) identify the main risk factors relevant to *retail clients'* exercise of open market options; and

(2) prepare appropriate retirement risk warnings in relation to each of those risk factors.

19.4.8D G (1) Examples of the risk factors relevant to *retail clients'* exercise of open market options include:

(a) the *client's* age and intended retirement date;

(b) the amount of the *client's* pension savings;

(c) if there are ongoing employer contributions;

(d) the existence of means-tested benefits;

(e) protection under the *compensation scheme*; and

(f) the *client's* need to review, make further decisions about, or take further actions in relation to their pension savings depending on their intended investment objectives.

(2) *Firms* should also have regard to the examples of risk factors which relate to pension decumulation products at ■ COBS 19.7.12G.

Step 2: identify which warnings to give a retail client

19.4.8E R To provide appropriate retirement risk warnings a *firm* must:

(1) using information held about the *retail client* and their open market options, identify what risk factors are most likely to be present; and

(2) provide appropriate retirement risk warnings to the *retail client* in relation to the risk factors identified in (1).

19.4.8F G If it is unclear whether a risk factor is present, a *firm* should assume that the risk factor is present and give the *client* the appropriate retirement risk warning.

19.4.8G G ■ COBS 19.4.8J requires a *firm* to use only one A4-sized page for a *client's* retirement risk warnings. A *firm* should prioritise those risk warnings it considers to be the most relevant to the *retail client's* exercise of open market options.

19.4.8H R Retirement risk warnings which are provided between:

(1) four to ten weeks before the client reaches 55 years of age; and

(2) seven *months* before the *retail client's* intended retirement date,

must include a clear and prominent statement that accessing pension savings at this point in time may not be the best option.

19.4.8I R The *firm* must provide the *retail client* with the following information separately to the retirement risk warnings:

(1) the key assumptions that were used to prepare the retirement risk warnings; and

(2) the personal data it relied on to provide the retirement risk warnings.

Presentation of retirement risk warnings

19.4.8J R

(1) The retirement risk warnings must not exceed a single side of A4-sized paper when printed.

(2) The requirement in (1) does not apply if a *retail client* asks for the retirement risk warnings to be provided in an accessible format and the fulfilment of that request will necessitate the use of more than a single side of A4-sized paper.

Reminder

19.4.9 R At least six weeks before the *retail client's* intended retirement date the *firm* must:

(1) remind the *client* about the open market options statement;

(2) tell the *client* what sum of money will be available to exercise open market options;

(3) provide the *client* with a clear and prominent statement recommending that the *client* uses the *pensions guidance* and that appointments are available; and

(4) recommend that the *client* seeks appropriate guidance or advice to understand their options at retirement.

19.4.10 R The reminder must not include *financial promotions* for a pension decumulation product.

Key features illustrations

19.4.11 R A *firm* must not provide a *key features illustration* to a *retail client* for a pension decumulation product, excluding a *small lump sum payment*, unless:

(1) it is required to provide the *client* with the *key features illustration* in accordance with the *rules* on providing product information to clients (COBS 14.2.1R);

(2) without prompting by the *firm*, the *client* requests the *key features illustration*;

(3) it includes a *key features illustration* for each of the pension decumulation product options that it offers; or

(4) it includes multiple *key features illustrations* as indicative representations of each of the pension decumulation product options that it offers.

Communications about annuity options

19.4.12 R When a *firm* communicates with a *retail client* about their *pension annuity* options the *firm* must provide the *client* with information about how their circumstances can affect retirement income calculations and payments for *pension annuities* offered by the *firm* and on the open market.

19.4.13 G For the purpose of ■ COBS 19.4.12R, examples of the circumstances which can affect retirement income calculations and payments include:

(1) the *client's* marital status;

(2) whether the *client* has dependants;

(3) whether the *pension annuity* provides a fixed, increasing or decreasing income;

the certainty of income associated with an annuity;

(5) the *client's* state of health; and

(6) the *client's* lifestyle choices.

Communications about drawdown and uncrystallised funds pension lump sum options

19.4.14 R When a *firm* communicates with a *retail client* about their *drawdown pension* and *uncrystallised funds pension lump sum* options, the *firm* must provide the *client* with such information as is necessary for the *client* to make an informed decision including, where relevant, information about:

(1) how the remaining fund is invested;

(2) sustainability of income over time including;

(a) the extent to which any income is guaranteed; and

(b) implications of full encashment on the *client's* retirement income;

(3) the need to review, make further decisions about, or take further actions during the life of the pension decumulation product;

(4) impact on means-tested benefits;

(5) the effect of costs and charges on the *client's* income; and

(6) tax implications.

Communications about options to access pension savings

19.4.15 G A *firm* should ensure that when it makes any communication with a *retail client* concerned with the *client's* options to access their pension savings it has regard to the *fair, clear and not misleading rule*, the *client's best interests rule* and *Principles* 6 and 7. In particular a *firm* should:

(1) refer to the contents of the *MoneyHelper* fact sheet to identify what information might assist the *client* to understand their options;

(2) consider whether it needs to include or refer to any information contained in the *MoneyHelper* fact sheet;

(3) ensure that the content, presentation or layout of any:

(a) pension decumulation product information; or

(b) information provided in accordance with ■ COBS 19.4.6AR(2)(e), including information accessed via hypertext links or online calculators,

does not disguise, diminish or obscure important information or messages contained in the fact sheet or the single page summary document;

(4) prominently highlight the ability to shop around and state clearly that other providers might offer pension decumulation products that are more appropriate for the *client's* needs and circumstances and may offer a higher level of retirement income;

(5) present information in a logical order, using clear and descriptive headings and where appropriate cross-references and sub-headings to aid navigation; and

(6) where possible, use plain language and avoid the use of jargon, unfamiliar or technical language or, where this is not possible, provide easily accessible accompanying explanations in plain language.

Signposting pensions guidance

19.4.16 R

(1) When a *firm* communicates with a *retail client* about the *retail client's personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity* contract or *pension buy-out contract* which is provided by the *firm*, unless the circumstances in (2) apply, the *firm* must:

(a) refer to the availability of the *pensions guidance*;

(b) offer to provide the *client* with information about how to access the *pensions guidance*; and

(c) include a recommendation that the *client* seeks appropriate guidance or advice to understand their options at retirement.

(2) A *firm* is not required to provide the *client* with the statement required in (1) where:

(a) the *firm* communicates with the *client* for a purpose other than:

(i) encouraging the *client* to think about their open market options; or

(ii) facilitating access to the *client's* pension savings; or

(b) the *client* has already accessed the *pensions guidance*; or

(c) the *client* has already received advice from a *firm* on their open market options, for example from an independent financial adviser; or

(d) the *firm* is providing the *client* with an open market options statement or six-week reminder in accordance with ■ COBS 19.4.5AR or ■ COBS 19.4.9R.

19.4.17 G An example of behaviour by or on behalf of a *firm* that is likely to contravene the *client's best interests rule* or *Principle* 6 and may contravene other *Principles* is for a *firm* to actively discourage a *retail client* from using the *pensions guidance*, for example by:

(1) leading the *client* to believe that using the *pensions guidance* is unnecessary or would not be beneficial; or

(2) obscuring the statement about the availability of the *pensions guidance* or any other information relevant to the exercise of open market options.

Tax implications

19.4.18 R If a *firm* receives an application from a *retail client* to access some or all of their pension savings, the *firm* must provide the *client* with a description of the tax implications before the *client* accesses their pension savings.

19.4.19 R A *firm* is not required to provide the information in ■ COBS 19.4.18R where it is provided in accordance with ■ COBS 14.2.1R.

19.5 Independent governance committees (IGCs) and publication and disclosure of costs and charges

Application

19.5.1 R This section applies to:

(1) a *firm* which operates a *relevant scheme* in which there are at least two *relevant policyholders*; or

(2) a *firm* which offers or has decided to offer a *pathway investment*.

Definitions

19.5.1A R In this section:

(1A) "employer pension arrangements" means an arrangement where eligibility for membership of that arrangement or section is limited to the employees of a specified employer or employers;

(1AA) "investment performance" means the investment performance of the:

(a) pension savings of *relevant policyholders*; or

(b) the drawdown fund of pathway investors;

(1) "drawdown fund" means either a *capped drawdown pension fund* or a *flexi-access drawdown pension fund*;

(2) "offer" means where a *firm* (F1) makes a *pathway investment* available for *investment* in the drawdown fund which F1 operates, where the *pathway investment* is either:

(a) *manufactured* by F1; or

(b) *manufactured* by another firm (F2);

(3A) "pathway investment comparators" means other *pathway investments* (that are not provided by the *firm*) selected by an *IGC* under COBS 19.5.5R(2A)(e)(i) to (iii) and which:

(a) are individual *pathway investments*; or

(b) are cohorts of similar *pathway investments*;

(3) "pathway firm" means a *firm* which offers a *pathway investment*;

(4) "pathway investor" means a *retail client* investing in a *firm's pathway investment*;

(5A) "scheme comparators" means other pension arrangements (that are not provided by the *firm*) selected by an *IGC* under ■ COBS 19.5.5R(2)(e)(i) to ■ (iii) and which:

(a) are individual employer pension arrangements; or

(b) are cohorts of similar employer pension arrangements;

(5AA) "services" refers to the services provided by a *firm* to *relevant policyholders* or pathway investors and includes:

(a) the communications issued to *relevant policyholders* or pathway investors; and

(b) the administration of the *relevant scheme* or *pathway investment*;

(5) "referring" means a *firm* which arranges for a *retail client* to invest in a *pathway investment* available through a transfer to the drawdown fund operated by another *firm* (F2), where F2 offers its own *manufactured pathway investment*;

(6) "stewardship" relates to a *firm's* exercise of rights or engagement activities in relation to the *investments* attributable to the *firm's relevant policyholders* or pathway investors, and may include:

(a) the exercise of a *firm's* voting rights in those *investments*; and

(b) monitoring and engaging on matters such as strategy, performance, risk, culture and governance of the *investments*;

(7) "*IGC's* remit of review" means the remit of the *IGC* as described in ■ COBS 19.5.5R(2), ■ COBS 19.5.5R(2A), ■ COBS 19.5.5R(2B), ■ COBS 19.5.5R(2C), and, where applicable ■ COBS 19.5.5R(2D) and ■ COBS 19.5.5R(2E).

19.5.1B R [deleted]

Purpose

19.5.1B G The purpose of this section is:

(1) to ensure that *relevant policyholders* and pathway investors benefit from independent review of the *investments* they invest in through the establishment of an *IGC* or (where appropriate) a *governance advisory arrangement*.

The specific objectives of the *IGC* or *governance advisory arrangement* are to:

(a) assess whether a *firm* provides value for money for *relevant policyholders* or pathway investors;

(b) provide an independent consideration of a *firm's* policies on:

(i) ESG financial considerations;

(ii) non-financial matters;

(iii) stewardship; and

(iv) where applicable, *other financial considerations* to the extent that they pose a particular and significant risk of financial harm to the *relevant policyholders* or pathway investors.

Requirement to establish an IGC

19.5.2 R A *firm* (Firm A) must establish an *IGC*, unless:

(1) Firm A has established a *governance advisory arrangement* in accordance with ■ COBS 19.5.3R; or

(2) another *firm* in Firm A's group has already established an *IGC* under this section, and Firm A has made arrangements with that *IGC* to cover a *relevant scheme* operated by Firm A or a *pathway investment* offered by Firm A.

Governance advisory arrangements

19.5.3 R (1) If a *firm* considers it appropriate, it may establish a *governance advisory arrangement* instead of an *IGC*, having regard to:

(a) for a *relevant scheme* operator, the size, complexity and nature of the *relevant scheme* it operates; or

(b) for a pathway firm, the size of the take up, or expected size of the take up, complexity and nature of the *pathway investment*.

(2) If a *firm* has decided to establish a *governance advisory arrangement* rather than an *IGC*, this section (other than ■ COBS 19.5.9R (2), ■ COBS 19.5.9R (3), ■ COBS 19.5.10 G, ■ COBS 19.5.11 R and ■ COBS 19.5.12 G) apply to the *firm* by reading references to the *IGC* as references to the *governance advisory arrangement*.

(3) A *firm* must establish a *governance advisory arrangement* on terms that secure the independence of the *governance advisory arrangement* and its Chair from the *firm*.

19.5.4 G (1) *Firms* with large or complex *relevant schemes* should establish an *IGC*. For the purposes of this section, a *firm* may determine whether it has large *relevant schemes* by reference to:

(a) the number of *relevant policyholders* in *relevant schemes*;

(b) the funds under management in *relevant schemes*; and

(c) the number of employers contributing to *relevant schemes*.

(2) Examples of features that might indicate complex schemes include:

(a) schemes that are operated on multiple information technology systems;

(b) schemes that have multiple charging structures;

(c) schemes that offer a *with-profits fund*; and

(d) the *firm* offers *relevant policyholders* access to investment funds it operates or which are operated by an entity with the same ownership.

(3) A pathway firm that has, or expects to have, a large take up of a *pathway investment* should establish an *IGC*.

(4) A *firm* may determine whether it has, or expects to have, a large take up of a *pathway investment* by reference to:

(a) the number of *retail clients* invested, or expected to invest, in a *pathway investment* offered by the *firm*; or

(b) the amount of the *firm's* pathway investors' funds under, or expected to be under management in a *pathway investment* offered by the *firm*.

(5) Examples of features that might indicate a complex *pathway investment* include:

(a) a *pathway investment* that has multiple charging structures; or

(b) a *pathway investment* that uses a sophisticated or complex *investment* strategy, which may include *investments* in a *with-profits fund*.

(6) Having regard to the nature of the *pathway investment*, a *firm* may consider that it is more appropriate to use a *governance advisory arrangement* where the *pathway investment* it offers is *manufactured* by another *firm*.

(7) If a *firm manufactures* its own *pathway investment*, it may be more appropriate for the *firm* to establish an *IGC*.

(8) A *firm* should consider establishing an *IGC* instead of a *governance advisory arrangement* if the *firm* both operates a *relevant scheme* and also *manufactures* its own *pathway investment*.

Terms of reference for an IGC

19.5.5 **R** A *firm* must include, as a minimum, the following requirements in its terms of reference for an *IGC*:

(1) the *IGC* will act solely in the interests of:

(a) *relevant policyholders* and any other members or *clients* a *firm* asks the *IGC* to consider; or

(b) pathway investors;

(2) the *IGC* will assess the ongoing value for money for *relevant policyholders* delivered by a *relevant scheme* particularly, though not exclusively, through assessing the three factors in (a) to (c) below, taking into account the specific points in (d) to (g)::

(a) the level of charges and costs, in particular:

(i) *administration charges* and any *transactions costs* borne by *relevant policyholders*; and

(ii) any other charges borne by *relevant policyholders* and any other costs incurred as a result of managing and investing, and activities in connection with the managing and investing of, the pension savings of *relevant policyholders*;

(b) investment performance; and

(c) the quality of services including whether:

(i) the communications are fit for purpose and properly take into account the characteristics, needs and objectives of the *relevant policyholders*; and

(ii) core financial transactions are processed promptly and accurately, such as processing contributions, transfers or death benefits;

(d) as part of the ongoing value for money assessment in (2), the *IGC* will need to consider whether to assess the *relevant scheme* by

reference to employer pension arrangements on an individual basis or on an aggregated basis using cohorts of sufficiently similar employer pension arrangements, or a combination of both, to enable the *IGC* to produce a value for money assessment that is the most useful for the members of the *relevant scheme*, but which is also appropriate and proportionate in the circumstances;

(e) as part of the ongoing value for money assessment in (2)(a)(i), (b) and (c), the *IGC* will need to:

(i) consider whether individual employer pension arrangements or cohorts of employer pension arrangements, or a combination of both, would be most appropriate to be part of its scheme comparators taking into account the proportionality and usefulness of each;

(ii) (where it selects cohorts of employer pension arrangements as part of its scheme comparators) select sufficiently similar employer pension arrangements that enable the *IGC* to produce an assessment that is the most useful for the members of the *relevant scheme*;

(iii) select a small number of reasonably comparable scheme comparators (including those which could potentially offer better value for money in respect of factors (2)(a)(i), (b) and (c));

(iv) use reasonable endeavours to obtain and compare the relevant data that it needs to carry out useful assessments in respect of the factors set out in (2)(a)(i), (b) and (c), in a manner which is proportionate to the likely member benefits that will result from the *IGC* assessing the data;

(v) assess the *relevant scheme* by reference to the scheme comparators based on factors (2)(a)(i), (b) and (c) (to the extent that there is publicly, or readily, available information about the scheme comparators in respect of those factors); and

(vi) consider whether any of the scheme comparators offer better value for money for *relevant policyholders* based on factors (2)(a)(i), (b) and (c) (to the extent that there is publicly, or readily, available information about the scheme comparators in respect of those factors);

(f) as part of the assessment of quality of services in 2(c), the *IGC* will need to assess whether default investment strategies within those schemes:

(i) are designed and executed in the interests of *relevant policyholders*; and

(ii) have clear statements of aims and objectives;

(g) as part of the assessment of quality of services in 2(c), the *IGC* will need to assess whether the characteristics and net performance of investment strategies are regularly reviewed by the *firm* to ensure alignment with the interests of *relevant policyholders* and that the *firm* takes action to make any necessary changes;

(2A) the *IGC* will assess the ongoing value for money for pathway investors delivered by a *pathway investment* particularly, though not exclusively, through assessing the three factors in (a) to (c) below, taking into account the specific points in (d) to (g):

the level of charges and costs in particular:

(i) *administration charges* and any *transactions costs* borne by pathway investors; and

(ii) any other charges borne by pathway investors and any other costs incurred as a result of managing and investing, and activities in connection with the managing and investing of, the drawdown fund of pathway investors;

investment performance; and

the quality of services including whether:

(i) the communications are fit for purpose and properly take into account the characteristics, needs and objectives of the pathway investors; and

(ii) core financial transactions are processed promptly and accurately, such as processing contributions, transfers or death benefits;

as part of the ongoing value for money assessment in (2A), the *IGC* will need to consider whether to assess the *pathway investment* on an individual basis or on an aggregated basis using cohorts of sufficiently similar *pathway investments*, or a combination of both, to enable the *IGC* to produce a value for money assessment that is the most useful for the pathway investors, but which is also appropriate and proportionate in the circumstances;

as part of the ongoing value for money assessment in (2A)(a)(i), (b) and (c), the *IGC* will need to:

(i) consider whether individual *pathway investments* or cohorts of *pathway investments*, or a combination of both, would be most appropriate to be part of pathway investment comparators taking into account the proportionality and usefulness of each;

(ii) (where it selects cohorts of *pathway investments* as part of its pathway investment comparators) select sufficiently similar *pathway investments* that enable the *IGC* to produce an assessment that is the most useful for the pathway investors;

(iii) select a small number of reasonably comparable pathway investment comparators (including those which could potentially offer better value for money in respect of factors (2A)(a)(i), (b) and (c));

(iv) use reasonable endeavours to obtain and compare the relevant data that it needs to carry out useful assessments in respect of the factors set out in (2A)(a)(i), (b) and (c), in a manner which is proportionate to the likely pathway investor benefits that will result from the *IGC* assessing the data;

(v) assess the *pathway investment* by reference to the pathway investment comparators based on factors (2A)(a)(i), (b) and (c) (to the extent that there is publicly, or readily, available information about the pathway investment comparators in respect of those factors); and

(vi) consider whether any of the pathway investment comparators offer better value for money for pathway investors based on factors (2A)(a)(i), (b) and (c) (to the extent that there is publicly, or readily, available information about

the pathway investment comparators in respect of those factors);

(f) as part of the assessment of quality of services in (2A)(c), the *IGC* will need to assess whether the *pathway investment* offered by the *firm*:

(i) is designed and managed in the interests of pathway investors; and

(ii) has a clear statement of aims and objectives;

(g) as part of the assessment of quality of services in (2A)(c), the *IGC* will need to assess whether the characteristics and net performance of the *pathway investment* are regularly reviewed by the *firm* to ensure alignment with the interests of pathway investors and that the *firm* takes action to make any necessary changes;

(2B) where a *firm* has an *investment* strategy or makes *investment* decisions which could have a material impact on the *relevant policyholders*' or pathway investors' *investment* returns, the *IGC* will consider and report on:

(a) the adequacy and quality of the *firm's* policy (if any) in relation to *ESG financial considerations*;

(b) the adequacy and quality of the *firm's* policy (if any) in relation to *non-financial matters*; and

(c) how the considerations or matters in (a) and (b) are taken into account in the *firm's investment* strategy or *investment* decision making; and

(d) the adequacy and quality of the *firm's* policy (if any) in relation to stewardship;

(2C) where the *firm* does not have a policy in relation to *ESG financial considerations*, *non-financial matters* or stewardship, the *IGC* will in each case consider and report on the *firm's* reasons for not having a policy;

(2D) where the *firm* has not already adequately taken into account, in its *investment* strategy or *investment* decision making, *other financial considerations* that pose a particular and significant risk of financial harm to the *relevant policyholders* or pathway investors, the *IGC* will also:

(a) consider and report on the adequacy and quality of the *firm's* policy (if any) in relation to those *other financial considerations*, and whether and how those considerations are taken into account in the *firm's investment* strategy or *investment* decision; or

(b) consider and report on the *firm's* reasons for not having a policy in relation to those considerations;

(2E) the *IGC* will consider and report on the extent to which the *firm* has implemented its stated policies in relation to the considerations and matters in (2B), (2C), and, where applicable (2D);

(3) in relation to the *IGC's* remit of review, the *IGC* will raise with the *firm's governing body* any concerns it may have:

(a) in relation to any of the matters it has assessed or considered; or

(b) where the *IGC* is unable to obtain or has difficulties obtaining from the *firm* the information it requires;

(3A) once a decision has been made by a *firm* to offer a *pathway investment*, the *IGC* must raise any concerns under (3):

(a) in good time to give the *firm's governing body* a proper opportunity to consider and address the *IGC's* concerns, before the *pathway investment* is offered to *retail clients*; and

(b) on an ongoing basis in relation to the *pathway investment* it offers;

(4) the *IGC* will escalate concerns as appropriate where the *firm* has not, in the *IGC's* opinion, addressed those concerns satisfactorily or at all;

(5) the *IGC* will meet, or otherwise make decisions to discharge its duties, using a quorum of at least three members, with the majority of the quorum being independent;

(6) the Chair of the *IGC* will be responsible for the production of an annual report setting out the following, in sufficient detail, taking into account the information needs of *consumers*:

(a) the *IGC's* opinion on:

(i) the value for money delivered by a *relevant scheme* or a *pathway investment*, particularly against the matters listed under (2) or (2A) and a statement setting out their overall assessment of whether the *relevant scheme* or *pathway investment* provides value for money; and

(ii) the adequacy and quality of the *firm's* policies, or reasons for not having policies, in relation to the considerations and matters listed under (2B), (2C) and (if applicable) (2D);

(aa) the extent to which the *firm* has implemented its stated policies in relation to the consideration and matters in (2B), (2C) and (if applicable) (2D);

(ab) an explanation of how the *IGC* carried out their assessment of ongoing value for money. This must include demonstrating how the factors set out in (2)(a) to (c) or (2A)(a) to (c) have been fully and properly considered;

(ac) the reasons:

(i) for the *IGC's* overall assessment of whether the *relevant scheme* or *pathway investment* provides value for money as required under (6)(a)(i);

(ii) (in relation to a *relevant scheme* only), where the *IGC* assessed the *relevant scheme* using cohorts of employer pension arrangements for the purposes of its general assessment in (2)(d) or used cohorts as part of the scheme comparators in (2)(e), why the *IGC* considers it is appropriate and proportionate to use cohorts and the *IGC's* reasons for using the characteristics that it used to select the cohorts;

(iii) (in relation to a *relevant scheme* only), why the *IGC* considers that the scheme comparators it selected for the purposes of its assessment under (2)(e) provided a reasonable comparison against the *relevant scheme*;

(iv) (in relation to a *pathway investment* only), where the *IGC* assessed the pathway investment using cohorts of *pathway*

investments for the purposes of its general assessment in (2A)(d) or used cohorts as part of the *pathway investment* comparators in (2A)(e), why the *IGC* considers it is appropriate and proportionate to use cohorts of *pathway investments* and the *IGC's* reasons for using the characteristics that it used to select the cohorts; and

(v) (in relation to a *pathway investment* only) why the *IGC* considers that the pathway investment comparators it selected for the purposes of its assessment under (2A)(e) provided a reasonable comparison against the *pathway investment*;

(b) how the *IGC* has considered *relevant policyholders*' or pathway investors' interests;

(c) any concerns raised by the *IGC* with the *firm's governing body* and the response received to those concerns;

(d) how the *IGC* has sufficient expertise, experience and independence to act in *relevant policyholders*' or pathway investors' interests;

(e) how each independent member of the *IGC*, together with confirmation that the *IGC* considers these members to be independent, has taken into account ■ COBS 19.5.12 G;

(f) the arrangements put in place by the *firm* to ensure that the views of *relevant policyholders* or pathway investors' are directly represented to the *IGC*; and

(g) administration charges and transaction costs information complying with the requirements in ■ COBS 19.5.16R;

(7) the Chair of the *IGC* will ensure the annual report is produced by 30 September each year, in respect of the previous calendar year;

(8) the *IGC* will ensure the publication of administration charges and transaction costs information complying with the requirements in ■ COBS 19.5.13R;

(9) the *IGC* will ensure that all members of each *relevant scheme* are provided with an annual communication complying with the requirements in ■ COBS 19.5.17R;

(10) the *IGC* will make available the annual communication referred to in (9), on request, to:

(a) *relevant scheme* members' spouses or civil partners; and

(b) persons within the application of the *relevant scheme* and qualifying or prospectively qualifying for benefits under the *relevant scheme*;

(11) the *IGC* will ensure that information is communicated under this *rule* in a manner that pays due regard to the purposes for which *relevant policyholders* might reasonably use the information; and

(12) the *IGC* will retain copies of any evidence used in their assessment of ongoing value for money for a minimum of six years.

Value for money assessment

19.5.5A G

(1) In the context of the *IGC's* assessment of ongoing value for money for *relevant policyholders* or pathway investors under ■ COBS 19.5.5R(2) or ■ COBS 19.5.5R(2A):

(a) the *administration charges* and *transaction costs* borne by *relevant policyholders* or pathway investors are likely to represent value for money when the combination of the charges and costs, and the investment performance and services are appropriate:

(i) for the *relevant policyholders* or pathway investors, and

(ii) when compared to other reasonably comparable options on the market.

(b) As part of the *IGC's* assessment under (1)(a)(i) regarding what is appropriate for *relevant policyholders*, the *IGC* should consider the size of the employer and the size and demographic of the membership of the *relevant scheme*.

(c) The *IGC* should not use a *firm's* compliance with the limits on *administration charges* (■ COBS 19.6.6R), of itself, as evidence of value for money.

(d) Where the limits on *administration charges* in ■ COBS 19.6.6R do not apply, the *IGC* should not use the fact that a *firm* keeps its *administration charges* at or below 1%, of itself, as evidence of value for money.

(2) The *IGC* should take into account the considerations in (3), as part of the *IGC's*:

(a) decision referred to in ■ COBS 19.5.5R(2)(d) about whether to carry out its ongoing value for money assessment of the *relevant scheme* by assessing the employer pension arrangements on an individual or cohort basis; or

(b) selection of scheme comparators under ■ COBS 19.5.5R(2)(e)(i) to ■ (iii).

(3) The considerations referred to in (2) are:

(a) the size and demographic of the membership of the individual employer pension arrangements and/or any proposed cohorts;

(b) (where cohorts are proposed), any other characteristics that it would be appropriate and proportionate for the *IGC* to use, in the particular circumstances of the *relevant scheme*, as part of its cohort selection criteria; and

(c) (if the *IGC* has used cohorts of employer pension arrangements in any part of its ongoing value for money assessment under ■ COBS 19.5.5R(2)) whether it would be appropriate and proportionate also to assess any particular employer pension arrangements within the cohorts on an individual basis in order to be able to carry out the most useful assessment under ■ COBS 19.5.5R(2).

(4) The *IGC* should take into account the considerations in (5), as part of the *IGC's*:

(a) decision referred to in ■ COBS 19.5.5R(2A)(d) about whether to carry out its ongoing value for money assessment of the *pathway investment* by assessing the *pathway investment* on an individual or cohort basis; or

(b) selection of pathway investment comparators under ■ COBS 19.5.5R(2A)(e)(i) to ■ (iii).

(5) The considerations referred to in (4) are:

(a) (where cohorts are proposed), any characteristics that it would be appropriate and proportionate for the *IGC* to use, in the particular circumstances of the *pathway investment*, as part of its cohort selection criteria; and

(b) (if the *IGC* has used cohorts of *pathway investments* in any part of its ongoing value for money assessment under ■ COBS 19.5.5R(2A)) whether it would be appropriate and proportionate to also assess any particular *pathway investments* within the cohorts on an individual basis in order to be able to carry out the most useful assessment under ■ COBS 19.5.5R(2A).

(6) As part of the *IGC's* selection of scheme comparators or investment pathways comparators under ■ COBS 19.5.5R(2)(e)(i) to ■ (iii) or ■ COBS 19.5.5R(2A)(e)(i) to ■ (iii), the *IGC* will need to include scheme comparators or pathway investment comparators that potentially offer better value for money in respect of the factors set out in ■ COBS 19.5.5R(2)(a)(i), ■ (b) and ■ (c) or ■ COBS 19.5.5R(2A)(a)(i), ■ (b) and ■ (c) (based on whatever information is publicly, or readily, available and is relevant to those factors).

(7) There is no expectation by the *FCA* that the *IGC* would carry out a comparison of all the comparable employer pension arrangements or all of the comparable *pathway investments* for the purposes of ■ COBS 19.5.5R(2)(e) or ■ COBS 19.5.5R(2A)(e).

Interests of relevant policyholders or pathway investors and consideration of adequacy and quality of a policy

19.5.6 G

(1) An *IGC* is expected to act in the interests of *relevant policyholders* or pathway investors both individually and collectively. Where there is the potential for conflict between individual and collective interests, the *IGC* should manage this conflict effectively. An *IGC* is not expected to deal directly with complaints from individual policyholders or pathway investors.

(2) The primary focus of an *IGC* should be the interests of *relevant policyholders* or pathway investors in accordance with ■ COBS 19.5.5R(1). If a *firm* asks an *IGC* also to consider the interests of other members or *clients*, the *firm* should provide additional resources and support to the *IGC* such that the *IGC's* ability to act in the interests of *relevant policyholders* or pathway investors is not compromised.

(3) An *IGC* should assess whether all the investment choices available to *relevant policyholders* or pathway investors, including default options, are regularly reviewed to ensure alignment with the interests of *relevant policyholders* or pathway investors.

(4) Where an *IGC* is unable to obtain from a *firm*, and ultimately from any other person providing relevant services, the information it requires to assess or to consider and report on the matters in the *IGC's* remit of review, the *IGC* should explain in the annual report why

it has been unable to obtain the information and how it will take steps to be granted access to that information in the future.

(5A) In addition to the ability of the *IGC* to escalate a concern about value for money under (5), if the *IGC* finds that:

(a) any of the scheme comparators offer better value for money for *relevant policyholders* than the *relevant scheme* based on the factors set out in ■ COBS 19.5.5R(2)(a)(i), ■ (b) and ■ (c); or

(b) any of the investment pathway comparators offer value for money for pathway investors than the *pathway investment* based on the factors set out in ■ COBS 19.5.5R(2A) (a)(i), ■ (b) and ■ (c),

the *IGC* should bring this matter, together with an explanation and relevant evidence, to the attention of the *firm's governing body*.

(5AA) If the *IGC* is not satisfied with the response of the *firm's governing body* to the concerns it has raised under (5A) and the *IGC* considers that informing the relevant employer or employers could be of material utility to the employers or the members regarding the *IGC's* concern about value for money under (5), the *IGC* should inform the relevant employer or employers directly.

(5AAA) In (5AA), an example of circumstances where an *IGC* may consider that informing the employer would be unlikely to be of material utility is where there are solely deferred members in any affected employer pension arrangement and the employer does not have the ability to effect a transfer of the deferred benefits from the employer pension arrangement to a new arrangement.

(5) If, having raised concerns with the *firm's governing body* about the matters in the *IGC's* remit of review, the *IGC* is not satisfied with the response of the *firm's governing body*, the *IGC* Chair may escalate concerns to the *FCA* if the *IGC* thinks that would be appropriate. The *IGC* may also alert *relevant policyholders* or pathway investors and employers and make its concerns public.

(6) The *IGC* Chair should raise with the *firm's governing body* any concerns that the *IGC* has about the information or resources that the *firm* provides, or arrangements that the *firm* puts in place to ensure that the views of *relevant policyholders* or pathway investors are directly represented to the *IGC*. If the *IGC* is not satisfied with the response of the *firm's governing body*, the *IGC* Chair may escalate its concerns to the *FCA*, if appropriate. The *IGC* may also make its concerns public.

(7) The *IGC* should make public the names of those members of the *IGC* who are *employees* of the provider *firm*, unless there are compelling reasons not to do so. The *IGC* should consult *employee* members as to whether there are such reasons.

The *IGC* need not consider and report on *ESG financial considerations* or *non-financial matters* or stewardship or *other financial considerations* as set out in ■ COBS 19.5.5R(2B) and ■ COBS 19.5.5R(2D) if the *firm* does not have an *investment* strategy or make *investment* decisions which could have a material impact on the *relevant policyholders'* or pathway investors' *investment* returns.

The *IGC* should only consider and report on *other financial considerations* as set out in ■ COBS 19.5.5R(2D) where it considers that:

they are likely to pose a particular and significant risk of financial harm to the *relevant policyholders* or pathway investors; and

the *firm* has not already adequately taken those *other financial considerations* into account in its *investment* strategy or *investment* decision making.

(10) When an *IGC* is considering the adequacy and quality of a *firm's* policies regarding *ESG financial considerations*, *non-financial matters*, stewardship or *other financial considerations*, the *IGC* should form a view as to whether:

(a) a policy sufficiently characterises the relevant risks or opportunities;

(b) it considers that a policy seeks to appropriately mitigate those risks and take advantage of those opportunities;

(c) a *firm's* processes have been designed to properly take into account those risks or opportunities;

(d) a policy is appropriate in the context of the expected duration of the *investment*; and

(e) a policy is appropriate in the context of the main characteristics of the actual or expected *relevant policyholders* or pathway investors.

(11) Where an *IGC* is considering whether a *firm* has adequately taken *other financial considerations* into account for the purposes of ■ COBS 19.5.5R(2D), it should also take into account the factors in ■ COBS 19.5.6(10)G, whether or not contained in a policy.

Duties of firms in relation to an IGC

19.5.7 R A *firm* must:

(1) take reasonable steps to ensure that the *IGC* acts and continues to act in accordance with its terms of reference;

(2) take reasonable steps to provide the *IGC* with all information reasonably requested by the *IGC* in good time for the purposes of carrying out its role;

(3) provide the *IGC* with sufficient resources as are reasonably necessary to allow it to carry out its role independently;

(4) have arrangements to ensure that the views of *relevant policyholders* or pathway investors can be directly represented to the *IGC*;

(5) take reasonable steps to address any concerns raised by the *IGC* under its terms of reference;

(5A) for any *pathway investment*, take reasonable steps to address any concerns raised by the *IGC* about the matters in ■ COBS 19.5.5R(3) and ■ (3A):

(a) before the *firm* offers the *pathway investment*, and

(b) promptly, for any *pathway investment* it already offers.

(6) provide written reasons to the *IGC* as to why it has decided to depart in any material way from any advice or recommendations made by the *IGC* to address any concerns it has raised;

(7) take all necessary steps to facilitate the escalation of concerns by the *IGC* under ■ COBS 19.5.5R (4) and ■ COBS 19.5.6G (5);

(8) make available the *IGC's* terms of reference and the three most recent annual reports, in a way appearing to the *firm* to be best calculated to bring them to the attention of *relevant policyholders* and their employers or to the attention of pathway investors; and

(9) provide each *relevant scheme's IGC* with administration charges and transaction costs information, setting out the costs and charges for each default arrangement and each alternative fund option that the member is able to select.

19.5.8 G

(1) A *firm* should consider allocating responsibility for the management of the relationship between the *firm* and its *IGC* to a person at the *firm* holding an *FCA significant-influence function* or *designated senior management function*.

(2) A *firm* should fund independent advice for the *IGC* if this is necessary and proportionate.

(3) A *firm* should not unreasonably withhold from the *IGC* information that would enable the *IGC* to carry out its duties in the *IGC's* remit of review.

(3A) A *firm* should provide the *IGC* with sufficient support and resources so that the *IGC* is properly able to carry out its duties in the *IGC's* remit of review.

(4) A *firm* should have arrangements for sharing confidential and commercially sensitive information with the *IGC*.

(5) A *firm* should use best endeavours to obtain, and should provide the *IGC* with, information on the costs incurred as a result of managing and investing, and activities in connection with the managing and investing of, the assets of a *relevant scheme* or which could impact a *pathway investment*, including transaction costs. Information about costs and charges more broadly should also be provided, so that the *IGC* can properly assess the value for money of a *relevant scheme* or a *pathway investment* and the funds held within these.

(6) If a *firm* asks an *IGC* to take on responsibilities in addition to those in ■ COBS 19.5.5 R, the *firm* should provide additional resources and support to the *IGC* such that its ability to act within its terms of reference in ■ COBS 19.5.5 R is not compromised.

(7) A *firm* should provide secretarial and other administrative support to the *IGC*. The nature of the support, including how it is provided and by whom, should not conflict with the *IGC's* ability to act independently of the *firm*.

(8) A *firm* can make the *IGC's* terms of reference and the *IGC's* three most recent annual reports available in a way designed to bring them to *relevant policyholders'* and their employers' attention or to the attention of pathway investors by placing them in an appropriately prominent and relevant position on its website, and by providing them on request to relevant policyholders and their employers or to pathway investors.

Appointment of IGC members

19.5.9 R

(1) A *firm* must take reasonable steps to ensure that the *IGC* has sufficient collective expertise and experience to be able to make judgements on the matters in the *IGC's* remit of review.

(2) A *firm* must recruit independent *IGC* members through an open and transparent recruitment process.

(3) A *firm* must appoint members to the *IGC* so that:

(a) the *IGC* consists of at least five members, including an independent Chair and a majority of independent members;

(b) *IGC* members are bound by appropriate contracts which reflect the terms of reference in ■ COBS 19.5.5 R, and on such terms as to secure the independence of independent members;

(c) independent *IGC* members who are individuals are appointed for fixed terms of no longer than five years, with a cumulative maximum duration of ten years;

(d) individuals acting as the representative of an independent corporate member are appointed to the *IGC* for a maximum duration of ten years;

(e) independent *IGC* members who are individuals, including those representing independent corporate members, are not eligible for reappointment to the *IGC* until five years have elapsed, after having served on the *firm's IGC* for the maximum duration of ten years;

(f) appointments to the *IGC* are managed to maintain continuity in terms of expertise and experience of the *IGC*.

19.5.10 G

(1) The effect of ■ COBS 19.5.9R (3)(b) is that *employees* of the *firm* who serve on an *IGC* should be subject to appropriate contractual terms so that, when acting in the capacity of an *IGC* member, they are free to act within the terms of reference of the *IGC* without conflict with other terms of their employment. In particular, when acting as an *IGC* member, an *employee* will be expected to act solely in the interests of *relevant policyholders* or pathway investors and should be able to do so without breaching any terms of their employment contract.

(2) An individual may serve on more than one *IGC*.

(3) A *firm* should replace any vacancies that arise within *IGCs* as soon as possible and, in any event, within six months.

(4) A *firm* should involve the *IGC* Chair in the appointment and removal of other members, both independent members and *employees* of the *firm*.

(5) A *firm* should consider indemnifying *IGC* members against any liabilities incurred while fulfilling their duties as *IGC* members.

IGC members who are independent

19.5.11 R

The *firm*, in appointing independent *IGC* members, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.

19.5.12 G

(1) An *IGC* member is unlikely to be considered independent if any of the following circumstances exist:

(a) the individual is an *employee* of the *firm* or of a company within the *firm's group* or paid by them for any role other than as an *IGC* member, including participating in the *firm's* share option or performance-related pay scheme;

(b) the individual has been an *employee* of the *firm* or of another company within the *firm's group* within the five years preceding his appointment to the *IGC*;

(c) the individual has, or had within the three years preceding his appointment, a material business relationship of any description with the *firm* or with another company within the *firm's group*, either directly or indirectly.

(2) A *firm* may appoint a *body corporate* to an *IGC*, including as Chair. The corporate member should notify the *firm* of the individual who will act as the member's representative on the *IGC*. A *firm* should consider the circumstances of a corporate *IGC* member and any representative of the corporate member with the objective of ensuring that any potential conflicts of interest are managed effectively so that they do not affect the corporate *IGC* member's ability to represent the interests of *relevant policyholders* or pathway investors.

(3) Should the *firm*, or another company within the *firm's group*, operate a mastertrust, there may be benefits in a trustee of such a mastertrust also being an *IGC* member. If such circumstances exist, an individual or a corporate trustee may be suitable to be an independent *IGC* member, notwithstanding the relationship with the *firm*.

(4) A *firm* should review on a regular basis whether its independent *IGC* members continue to be independent and take appropriate action if it considers that they are not.

Publication and disclosure of costs and charges by IGCs

19.5.13 R

The administration charges and transactions costs information referred to in ■ COBS 19.5.5R(8) must, in relation to each *relevant scheme*:

(1) be published by 30 September each year, in respect of the previous calendar year;

(2) be available for free on a publicly accessible website;

(3) include the costs and charges for each default arrangement and each alternative fund option that a member is able to select; and

(4) include an illustration of the compounding effect of the administration charges and transaction costs, based on either the assumptions contained in ■ COBS 13 Annex 2 or those in Version 4.2 of the Actuarial Standard Technical Memorandum (AS TM1) produced by the Financial Reporting Council, for a representative range of fund options that a member is able to select.

19.5.14 R

Regarding transaction costs:

(1) the requirements in ■ COBS 19.5.13R(3) and ■ COBS 19.5.16R(1) apply to the extent that such information is available to the *IGC*; and

(2) the published information should include a warning giving brief details of any unavailable information that the *IGC* is aware of.

19.5.15 G An example of the type of illustration referred to in ■ COBS 19.5.13R(4) is shown below. The assumptions in the notes should reflect the actual assumptions used.

Projected pension pot in today's money

Fund choice

	Default Arrangement		Fund A		Fund B		Fund C	
Years	Before charges + costs deducted	After all charges + costs deducted	Before charges + costs deducted	After all charges + costs deducted	Before charges + costs deducted	After all charges + costs deducted	Before charges + costs deducted	After all charges + costs deducted
1								
3								
5								
10								
15								
20								
25								
30								
35								
40								

Example notes:

1. Projected pension pot values are shown in today's terms, and do not need to be reduced further for the effect of future inflation.

2. The starting pot size is assumed to be £10,000.

3. Inflation is assumed to be 2.5% each year.

4. Contributions are assumed from age 22 to 68 and increase in line with assumed earnings inflation of 2.5% to 4% each year.

5. Values shown are estimates and are not guaranteed.

6. The projected growth rate for each fund are as follows:

Default fund: 2.5% above inflation

Fund A: 2% above inflation

Fund B: 1% above inflation

Fund C: 1% below inflation

19.5.16 R The administration charges and transaction costs information in the *IGC's* annual report referred to in ■ COBS 19.5.5R(6)(g) must, in relation to each *relevant scheme*:

(1) at a minimum, include the costs and charges for each default arrangement;

(2) explain how a *relevant scheme* member can access the costs and charges information for each default arrangement and each alternative fund option that a member is able to select, including providing a link to the website required by ■ COBS 19.5.13R(2); and

(3) be published alongside any information in the *IGC's* annual report relating to the *relevant scheme's* default investment strategy and value for members.

19.5.17 R The annual communication referred to in ■ COBS 19.5.5R(9) must:

(1) include a brief description of the most recent transaction costs and administration charges information that has been published in accordance with ■ COBS 19.5.13R, and an explanation of how that information is relevant to the *relevant scheme* member; and

(2) explain how a *relevant scheme* member can access the information referred to in (1), including providing a link to the website required by ■ COBS 19.5.13R(2).

19.5.18 G The annual communication may be included with any other annual communication from the *operator* to the member of the *relevant scheme*.

19.5.19 G The annual communication provided to a *relevant scheme* member may also include the particular transaction costs and administration charges that have been incurred by that member.

19.5.20 G In communicating information in compliance with ■ COBS 19.5.5R(11), the *IGC* should ensure, for example, that it is straightforward for a *relevant scheme* member to compare the transaction costs and administration charges between fund options that are available for them to select.

19.6 Restriction on charges in qualifying schemes

Application

19.6.1 R This section applies to an *operator* of a *qualifying scheme*.

19.6.2 R The restrictions on *administration charges* in ■ COBS 19.6.4 R do not apply in relation to a *default arrangement* under which, at any time before benefits come into payment, those benefits accruing to the member involve, or involve an option to have, a promise by or to be obtained from a third party about the rate or amount of those benefits.

Express agreement

19.6.3 G

(1) In this section, where express agreement is required by a *rule*, the *FCA* would expect *firms* to take active steps to obtain the informed, active consent of the affected member(s) of the *qualifying scheme*, and to have that consent in writing in a *durable medium*, capable of being produced or reproduced when requested by the *FCA*.

(2) The *FCA* does not consider the following to amount to express agreement (this list is not exhaustive):

(a) a member receiving a communication stating that by becoming or continuing to be a member of the scheme, the member has agreed to a particular service;

(b) a member being invited to click on a box to opt-out through a website link.

Default arrangements: charging structures and restrictions

19.6.4 R A *firm*, for a *default arrangement* within a *qualifying scheme*, may only make, impose or otherwise facilitate payment of an *administration charge* by way of an *accrued rights charge* or a *combination charge structure* where:

(1) the limits in ■ COBS 19.6.6 R are not exceeded; or

(2) the *firm* has obtained appropriate express agreement to exceed the limits and the following conditions are satisfied:

(a) the express agreement contains an acknowledgement by the member that the *administration charge* for the service is likely to exceed the limits;

(b) giving such express agreement is not a condition of becoming or remaining a member of the *qualifying scheme*;

(c) express agreement has not been given for services which the *operator* must provide under the *regulatory system* or the general law, or which are core services.

19.6.5 G The effect of ■ COBS 19.6.4R (2)(c) is that a *firm* may not seek express agreement from a member to charges in excess of the limits for services which are obligatory under law, or form part of the core operation of the scheme. Such core services include, for example, designing and implementing an investment strategy, investing contributions to the scheme (to the extent that this would incur *administration charges*), holding investments relating to scheme members and transferring a member's accrued rights into or out of a *default arrangement*.

19.6.6 R The limits on *administration charges* are as follows:

(1) for a *qualifying scheme* which uses only an *accrued rights charge*, 0.75% of the value of those accrued rights;

(2) for a *qualifying scheme* which uses a combination charge scheme:

(a) for the *flat-fee charge* element, £25 annually;

(b) for the *contribution percentage charge* element, 2.5% of the contributions annually;

(c) for the associated *accrued rights charge*, the limits as set out in column 2 of the table in ■ COBS 19.6.7 R.

19.6.7 R This is the table referred to in ■ COBS 19.6.6 R.

Contribution percentage charge rate (%)	*Accrued rights charge rate (%)*
1 or lower	0.6
Higher than 1 but no higher than 2	0.5
Higher than 2 but no higher than 2.5	0.4

Flat-fee charge (£)	*Accrued rights charge rate (%)*
10 or less	0.6
More than 10 but no more than 20	0.5
More than 20 but no more than 25	0.4

Compliance with the restrictions on charges

19.6.8 E (1) To ensure that *administration charges* are within the limits set out in ■ COBS 19.6.6 R:

(a) a *firm* should calculate the value of accrued rights in an *accrued rights charge* as the arithmetic mean over a 12-month period of membership of the *qualifying scheme*, using at least four evenly-distributed reference points over that period;

(b) a *firm* should calculate the value of contributions in a *contribution percentage charge* over a 12-month period of membership of the *qualifying scheme* of a member's *workplace pension contributions*;

(c) for members who have been members of the *qualifying scheme* for a period of less than 12 months, a *firm* should calculate administrative charges on a pro rata basis;

(d) the total *administration charges* imposed should not exceed the relevant restriction when measured over a 12-month period. However, where the *qualifying scheme* has been in operation for less than 12 months, and the *firm's* internal processes would involve assessment of *administration charges* before 12 months has elapsed, then for its initial assessment, the *firm* may use a period of up to 18 months.

(2) Contravention of (1) may be relied on as tending to establish contravention of ■ COBS 19.6.4R (1) .

Prohibition of payments to third parties from qualifying schemes

19.6.9 R

(1) A *firm* must not make any *administration charge*, or otherwise make or facilitate any payment or provide any non-monetary benefit, in respect of any service provided by a third party in connection with a *qualifying scheme* which would have the effect of decreasing the value of the accrued rights of any member of that scheme.

(2) The restriction in (1) does not apply where the *firm* has obtained express agreement from the relevant member to such a payment.

19.6.10 G

[deleted]

Differential charges

19.6.11 R

A *firm* must not impose greater *administration charges* on a member of a *qualifying scheme* whose *workplace pension contributions* ceased on or after 6 April 2016 than those imposed on a member for whom such contributions are still being made.

19.6.12 G

The effect of ■ COBS 19.6.11 R is to prohibit active member discounts within automatic enrolment schemes.

19.6A Restrictions on early exit charges in personal pension schemes and stakeholder pension schemes

Application

19.6A.1 R This section applies to an *operator* of a *personal pension scheme* or a *stakeholder pension scheme*.

Purpose

19.6A.2 G The purpose of this section is to make *rules* prohibiting the imposition of, and provision for, certain *early exit charges* on members of *personal pension schemes* and *stakeholder pension schemes*. Section 137FBB of the *Act* requires the *FCA* to make such *rules*.

Exclusion

19.6A.3 R This section does not apply to any charge which is excluded from the scope of section 137FBB of the *Act* by the Financial Services and Markets Act 2000 (Early Exit Pensions Charges) Regulations 2016 (SI 2016/1079).

Prohibition on early exit charges on a member joining or incrementing benefits under a scheme on or after 31 March 2017

19.6A.4 R (1) A *firm* must not:

(a) impose; or

(b) include in the arrangements relating to a *personal pension scheme* or *stakeholder pension scheme* any provision for the imposition of:

an *early exit charge* on a member of the scheme.

(2) This *rule* applies in relation to a member who entered into a contract or other arrangement on or after 31 March 2017 providing for:

(a) a right to benefits resulting from contributions to the scheme; or

(b) an increment to benefits resulting from contributions to the scheme, but only in respect of the member's benefits under that contract or other arrangement.

Restriction on early exit charges on a member who joined or incremented a scheme before 31 March 2017

19.6A.5 R

(1) A *firm* must not impose an *early exit charge* on a member of a *personal pension scheme* or *stakeholder pension scheme* that exceeds the lower of:

(a) 1% of the value of the member's benefits being taken, converted or transferred; or

(b) such lower amount as was provided for under the scheme arrangements as at 31 March 2017; or

(c) where no such provision was made, no charge.

(2) A *firm* must not:

(a) include provision in such a scheme for an *early exit charge*, where such provision did not exist on 31 March 2017; or

(b) vary provision for an *early exit charge* in such a scheme to increase or potentially increase the charge.

(3) The value of the member's benefits in (1)(a):

(a) is calculated at the point when the *firm* receives confirmation from the member of the instruction to take the action giving rise to the *early exit charge*;

(b) excludes an increment to member's benefits resulting from contributions to a scheme under a contract or other arrangement entered into by the member on or after 31 March 2017;

(c) excludes adjustments referred to, and satisfying the conditions in Regulation 3 of the Financial Services and Markets Act 2000 (Early Exit Pensions Charges) Regulations 2016 (SI 2016/1079); and

(d) does not exclude adjustments referred to in Regulation 4 of the Financial Services and Markets Act 2000 (Early Exit Pensions Charges) Regulations 2016 (SI 2016/1079).

(4) This *rule* applies in relation to a member who entered into a contract or other arrangement (providing for a right to benefits resulting from contributions to the scheme) before 31 March 2017.

19.7 Pensions nudge and retirement risk warnings

Definitions

19.7.1 R In this section:

(1) [deleted]

(2) "pension decumulation product" is a product used to access pension savings and includes:

(a) a facility to enable a *retail client* to make an *uncrystallised funds pension lump sum* payment;

(b) an option to take a *small lump sum payment*;

(c) a *drawdown pension*; and

(d) a *pension annuity*;

(3) "pension savings" is the proceeds of the *client's personal pension scheme*, *stakeholder pension scheme*, or *occupational pension scheme*;

(4) "retirement risk warnings" are the warnings required to be given to a *retail client* at step 3 of the process specified in this section;

(5) "risk factors" are the attributes, characteristics, external factors or other variables that increase the risk associated with a *retail client's* decision to access their pension savings using a pension decumulation product;

(6) "signpost" is the written or oral statement encouraging a *retail client* to use *pensions guidance* or to take regulated advice to understand their options at retirement which is at step 1 of the process specified in this section;

(7) "opt out" is the *retail client's* confirmation that they do not want to receive *pensions guidance*.

Application

19.7.2 R This section applies to a *firm* communicating with a *retail client* in relation to:

(1) accessing their pension savings using a pension decumulation product; or

(2) transferring rights accrued under their existing *pension scheme* to another *pension scheme* for the purpose of accessing their pension savings using a decumulation product.

19.7.3 R This section does not apply:

(1) to a *firm* giving regulated advice to a *retail client* on options to access their pension savings;

(2) if the *firm* has already provided the retirement risk warnings to the *retail client* in relation to their decision to access their pension savings and the *firm* has reasonable grounds to believe that the retirement risk warnings are still appropriate for the *client*.

Purpose

19.7.4 G (1) The purpose of this section is to ensure that a *firm*, which is communicating with a *retail client* about a pension decumulation product:

(a) explains the nature and purpose of *pensions guidance* to the *retail client*;

(b) encourages the *retail client* to receive *pensions guidance*; and

(c) gives appropriate retirement risk warnings,

at the point when the *retail client* has decided how to access their pension savings.

(2) If the *retail client* has not yet decided what to do, the *firm* should consider whether it is required to signpost the *pensions guidance* under ■ COBS 19.4.16R (signposting pensions guidance) and whether it may be appropriate to provide information about the risks associated with the *client's* options to access their pension savings generally.

19.7.5 G (1) This section amplifies *Principles* 6 and 7, but does not exhaust or restrict what they require. A *firm* will, in any event, need to ensure that its sales processes are consistent with the *Principles* and other *rules*.

(2) An example of a behaviour by a *firm* that is likely to contravene *Principle* 6 and may contravene other *Principles* is for a *firm* to actively discourage a *retail client* from receiving *pensions guidance*, for example by:

(a) indicating in any way that receiving *pensions guidance* is unnecessary, would not be beneficial, or might result in unnecessary delays in accessing their pension savings; or

(b) obscuring, de-emphasising or underplaying in any way the explanation about the benefits of *pensions guidance* or any other information relevant to assisting the *retail client* to decide how best to access their pension savings.

19.7.6 G An illustration of the steps a *firm* is required to take is set out in ■ COBS 19 Annex 1G.

Trigger: when does a firm have to follow the steps?

19.7.7 R A *firm* must follow the steps specified in this section at the point when the *retail client* has decided (in principle) to take one of the following actions (and before the action is concluded):

(1) buy a pension decumulation product; or

(2) vary their *personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity* contract or *pension buy-out contract* to enable the *client* to:

(a) access pension savings using a *drawdown pension*; or

(b) elect to make one-off, regular or ad-hoc *uncrystallised funds pension lump sum* payments; or

(3) receive a one-off, regular or ad-hoc *uncrystallised funds pension lump sum* payment; or

(4) access their pension savings using a *drawdown pension*;

(5) withdraw the funds in full from their pension savings, reducing the value of their rights to zero; or

(6) transfer rights accrued under their existing *pension scheme* to another *pension scheme* for the purpose of taking one of the actions in (1) to (5).

19.7.7A G A *firm* may assume that a *retail client* who is 50 years of age or over who decides to transfer rights accrued under their existing *pension scheme* to another *pension scheme* is doing so for the purpose of taking one of the actions in ■ COBS 19.7.7R(1) to ■ (5).

Pension transfer to access pension savings

19.7.7B R Where a *retail client* contacts a *firm* to communicate its decision (in principle) to transfer rights accrued under their existing *pension scheme* to another *pension scheme*, that *firm* (whether the *retail client's* existing *pension scheme* provider or the *firm* to whom they intend to transfer their rights) must take the actions in step 1.

19.7.8 R [deleted]

First part of step 1: explain pensions guidance and offer to book the appointment

19.7.8A R The first part of step 1 is as follows:

(1) the *firm* must:

(a) explain to the *retail client* the nature and purpose of *pensions guidance,* and that they can access the guidance for free;

(b) explain to the *retail client* that they can take regulated advice at their own cost; and

(c) offer to book an appointment for them to receive *pensions guidance*;

(2) if the *retail client* accepts the *firm's* offer to book an appointment for them, the *firm* must take reasonable steps to book an appointment at a suitable time for the *retail client*;

(3) if the *firm* is unable to book an appointment at a suitable time despite taking reasonable steps, or the *retail client* prefers to book

the appointment themselves, the *firm* must provide the *retail client* with sufficient information about how to book the appointment themselves;

(4) if the *firm* books the appointment for the *retail client*, it must provide a confirmation of all the relevant details necessary to enable the *retail client* to attend the appointment;

(5) if the *retail client* agrees to take the guidance or elects to take regulated advice, the *firm* must not proceed to step 2 until the *retail client* confirms they subsequently received the guidance or advice;

(6) the *firm* must proceed to step 2 at any point during the process in (1) to (5) if the *retail client*:

(a) confirms that they have already received regulated advice and opts out; or

(b) opts out, and confirms they do not want to take regulated advice;

(7) if the *retail client* states that the reason for opting out in (6)(b) is because they already received *pensions guidance* prior to approaching the *firm*, the *firm* must explain to the *retail client* that they may still benefit from receiving the guidance again if their personal circumstances, or the value of their pensions savings, have significantly changed such that the different options described to the *retail client* in the guidance may be of different significance and relevance to them than when they previously received the guidance.

19.7.8B G For the purpose of ■ COBS 19.7.8AR(1)(a), where a *firm* explains the nature and purpose of *pensions guidance*, the explanation should include that:

(1) the purpose of the guidance is to help the *retail client* make an informed decision about what to do with their pension savings, including the different options available to the *retail client* to access their pension savings; and

(2) the guidance is delivered at an appointment with an independent pensions specialist.

19.7.8C G Taking reasonable steps to finding a time that is suitable (in ■ COBS 19.7.8AR(2)) may include the *retail client* being given adequate opportunity to revert back to the *firm* with dates and times that are suitable for them to attend an appointment.

Second part of Step 1: confirming whether the retail client received pensions guidance or regulated advice

19.7.8D R (1) (Where the *firm* has completed the appropriate actions in ■ COBS 19.7.8AR, and either booked an appointment for the *retail client* or the *retail client* booked it themselves) the second part of step 1 is for the *firm* to check whether the *retail client* subsequently received *pensions guidance* by:

(a) if the appointment was booked by the *firm*, checking that the scheduled appointment date has passed; and only if so, asking the *retail client* to confirm that they attended the appointment and received the guidance; or

(b) if the *retail client* had to or elected to book the appointment themselves, asking the *retail client* to confirm that they subsequently booked the appointment and received the guidance.

(2) If the *firm* booked the appointment and the date of the scheduled appointment has not passed, the *firm* must explain the nature and purpose of *pensions guidance* again in ■ COBS 19.7.8AR(1)(a) and remind the *retail client* of their scheduled appointment.

(3) If the *retail client* failed to attend the appointment (booked by the *firm* or themselves), or failed to book their own appointment, the *firm* must repeat the process in ■ COBS 19.7.8AR, and explain to the *retail client* at this point that the *firm* cannot proceed unless the *retail client* confirms that they have received the guidance or taken regulated advice, or opts out.

(4) If the *retail client* confirms that they attended the appointment and received *pensions guidance*, the *firm* must proceed to step 2, unless the *firm* is aware or is made aware that the *retail client's* circumstances have, or may have, changed significantly, and it appears to the *firm* on reasonable grounds that the *retail client* may benefit from a repeat of the guidance in order to consider the different options available to them in the context of their current circumstances. In that case, the *firm* must repeat the process in ■ COBS 19.7.8AR.

(5) (Where the *firm* has completed the appropriate actions in ■ COBS 19.7.8AR and the *retail client* elected to take regulated advice), the *firm* must proceed to step 2 if the *retail client* confirms that they subsequently received the advice.

19.7.8E G Circumstances where the *retail client* may benefit from a repeat of *pensions guidance*, for the purposes of ■ COBS 19.7.8DR(4)), include where, since the date of the appointment:

(1) the *firm* is made aware that the *retail client's* personal circumstances have changed; or

(2) significant changes in market conditions mean that the *firm* is aware that, or the *firm* is made aware for other reasons that, the value of the *retail client's* pension savings may have significantly changed,

such that the different options described to the *retail client* in the guidance may be of different significance and relevance to them than when they previously received the guidance, in light of the change in circumstances.

Step 2: identify risk factors

19.7.9 R Based on how the *retail client* wants to access their pension savings, at step 2 the *firm* must ask the *client* questions to identify whether any risk factors are present, except where ■ COBS 19.7.9AR applies.

19.7.9A R If the value of the *retail client's* pension savings is £10,000 or less and there are no *safeguarded benefits*, the *firm*:

(1) is not required to ask questions to identify whether any risk factors are present; and

(2) must prepare appropriate retirement risk warnings based on the risk factors relevant to each pension decumulation product it offers to enable *retail clients* to access their pension savings.

19.7.9B R A firm may ask the *client* the questions required by ■ COBS 19.7.9R before the *client* has decided (in principle) to take one of the actions specified in ■ COBS 19.7.7R to access their pension savings.

19.7.9C R If, to complete step 2, a *firm* relies on information gathered prior to the *client's* decision to access their pension savings, the *firm* must be satisfied that this information is relevant, accurate and up-to-date before giving the risk warnings at step 3.

19.7.10 R A *firm* must prepare the questions required by ■ COBS 19.7.9 R before taking the steps for the first time, and must keep the questions up to date.

19.7.11 G To prepare for step 2, the *firm* should:

(1) identify the main risk factors relevant to each pension decumulation product it offers to enable *retail clients* to access their pension savings; and

(2) prepare questions to enable it to identify the presence of those risk factors for different *retail clients*.

19.7.12 G Examples of the sorts of risk factors which relate to pension decumulation products are:

(1) the *client's* state of health;

(2) loss of any guarantees;

(3) whether the *client* has a partner or dependants;

(4) inflation;

(5) whether the *client* has shopped around;

(6) sustainability of income in retirement;

(7) tax implications;

(8) charges (if a *client* intends to invest their pension savings);

(9) impact on means-tested benefits;

(10) debt; and

(11) investment scams.

Step 3: provide appropriate retirement risk warnings

19.7.13 R At step 3:

(1) if the value of the *retail client's* pension savings is £10,000 or less and there are no *safeguarded benefits*, based on how the *retail client* wants to access their pension savings, a *firm* must give the *client* the appropriate retirement risk warnings prepared under ■ COBS 19.7.9AR(2); and

(2) in all other cases, a firm must give the *retail client* appropriate retirement risk warnings in response to the client's answers to the *firm's* questions.

19.7.14 R A *firm* must prepare the retirement risk warnings required by ■ COBS 19.7.13 R in good time before taking the steps for the first time, and must keep them up to date.

19.7.15 G If after considering the *retail client's* answers it is unclear whether a risk factor is present, a *firm* should give the *client* the appropriate retirement risk warning.

Communicating the signpost and retirement risk warning

19.7.16 R When communicating the signpost and retirement risk warnings, the *firm* must do so clearly and prominently.

19.7.17 R Whatever the means of communication, the *firm* must ensure that the *retail client* cannot progress to the next stage of the sale unless the relevant signpost or retirement risk warning has been communicated to the *client*.

19.7.18 G For an internet sale, a *firm* should display the required information on a screen which the *retail client* must access and acknowledge as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *client* the option to click on a link or download a document.

Record keeping

19.7.19 R *Firms* must record whether the *retail client* has:

(1) received the retirement risk warnings at step 3 of the process specified in this section;

(2) received regulated advice;

(3) received *pensions guidance*; or

(4) opted out (and did not receive regulated advice).

19.7.20 G If the *firm* was told by the *retail client* that they already received *pensions guidance* or regulated advice prior to approaching the *firm*, and therefore did not need to receive it again, the *firm* should not record this as an opt

out. Instead, they should record this as the *retail client* having received *pensions guidance* under ■ COBS 19.7.19R(3), or under ■ (2) for regulated advice.

19.8 Disclosure of transaction costs and administration charges in connection with workplace pension schemes

Interpretation

19.8.1 R In this section:

(1) [deleted]

(2) 'anti-dilution mechanism' is any method used to the benefit of an *investment* to offset the impact of inflows or outflows from that *investment*, whether by way of:

(a) a levy; or

(b) any adjustment enabling further investment into, or redemption of investments from, the *investment*.

(3) 'arrangement', in connection with a *relevant scheme*, is any *investment* available to scheme members for the investment of their pension contributions.

(4) [deleted]

Application

19.8.2 R This section applies to:

(1) an *operator* of a *relevant scheme*; and

(2) a *firm* which holds information needed for the calculation of transaction costs or administration charges in the course of providing services in connection with:

(a) a *relevant scheme*;

(b) an arrangement; or

(c) an *investment* in which an arrangement is directly or indirectly invested.

Purpose

19.8.3 G (1) The purpose of the *rules* in this section is to enable governance bodies of workplace pension schemes to meet their obligations as set out in (2) and (3) by obliging *firms* which hold the relevant information to calculate transaction costs to a common standard and

provide that information, and information on administration charges, to governance bodies.

(2) An *operator* of a workplace *personal pension scheme* or *stakeholder pension scheme* is obliged under ■ COBS 19.5.7R(2) to take reasonable steps to provide its *IGC* (or *governance advisory arrangement*) with all information reasonably requested by it for the purpose of carrying out its role. The role of an *IGC*, under ■ COBS 19.5.5R(2), must include the assessment of value for money delivered by relevant schemes through the assessment of transaction costs (among other things).

(3) The trustees or managers of an occupational pension scheme are obliged to calculate, insofar as they are able to do so, the transaction costs borne by scheme members, and to assess the extent to which those costs represent good value for members. (See regulation 25 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715) as amended by the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879)).

Obligation to disclose transaction costs and administration charges

19.8.4 R A *firm* must respond in a reasonable time and in a reasonably acceptable format to a request for information relating to transaction costs and administration charges relating to a particular arrangement (or any *investment* in which the arrangement is directly or indirectly invested) over a period of time from or on behalf of:

(1) an *operator*, trustee or manager of a *relevant scheme*; or

another *firm* seeking to comply with its obligations under this section.

19.8.5 R In responding to the request referred to in ■ COBS 19.8.4R, the *firm* must:

(1) calculate the transaction costs incurred in relation to the arrangement or *investment* to which the request relates (including transaction costs incurred in any *investment* in which the arrangement or *investment* is directly or indirectly invested) in accordance with this section;

(2) disclose the results of the aggregation of those transaction costs to the requesting *person*, along with a breakdown of the identifiable elements of those costs;

(3) disclose the administration charges incurred in that arrangement or any *investment* to which the request relates (including administration charges incurred in any *investment* in which the arrangement or *investment* is directly or indirectly invested); and

(4) provide other relevant information which would or may assist in making comparisons between the costs or charges in (1) to (3) and the equivalent costs or charges of other pension schemes where available.

19.8.6 G

(1) The breakdown of identifiable transaction costs should include at least taxes, explicit fees and charges, costs in connection with securities lending and borrowing, and the benefit from anti-dilution mechanisms.

(2) Other relevant information regarding transaction costs or administration charges might include, in relation to each arrangement (or *investment* in which the arrangement is directly or indirectly invested): the investment return, measures of risk, portfolio turnover rate, proportion of securities loaned or borrowed, costs other than transaction costs, and typical and maximum levels of entry, exit and switching costs. This is not an exhaustive list, and *firms* should use discretion based on the composition of each particular arrangement (or *investment* in which the arrangement is directly or indirectly invested).

(3) Where it is not possible to calculate the amount of transaction costs or administration charges attributable to an arrangement (or *investment* in which the arrangement is directly or indirectly invested), a pro rata approach may be used, which assumes that transaction costs and administration charges are incurred evenly over time. A pro rata approach may also be used where information is not available for a full period or in other situations where the provision of information would otherwise be subject to unreasonable delay.

(4) When calculating administration charges for a default arrangement, *firms* should have regard to ■ COBS 19.6 (Restriction on charges in qualifying schemes) and the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879).

Taking reasonable steps to obtain necessary information

19.8.7 R

If a *firm* does not have the information necessary to comply with ■ COBS 19.8.4R and ■ COBS 19.8.5R, then it must:

(1) take reasonable steps to obtain that information; or

(2) where, despite having taken such reasonable steps, it remains unable to comply with ■ COBS 19.8.4R and ■ COBS 19.8.5R, provide a written explanation to the requesting party explaining why, including the percentage of *investments* in the arrangement (or *investment* in which the arrangement is directly or indirectly invested) for which information cannot be obtained, and indicating the categories of *investments* involved.

19.8.8 G

(1) In taking reasonable steps to obtain information about transaction costs or administration charges, a *firm* should request the information from other *firms* involved in providing services in connection with the *relevant scheme*, arrangement, or *investment* in which the arrangement is directly or indirectly invested.

(2) A *firm*, when seeking information about transaction costs or administration charges, should consider the materiality of that information to the calculation of costs and charges overall for each arrangement, in particular the degree to which it is necessary to look through to transactions in underlying *investments* in order to arrive at a fair assessment of the costs or charges of each arrangement.

Calculation of transaction costs for buying and selling transactions

19.8.9 R A *firm* must calculate the transaction cost of buying or selling an *investment* as the difference between arrival price (AP) and execution price (EP) of that *investment*, multiplied by the number of units of, or in, the *investment* transacted, as follows:

(1) AP and EP are determined in accordance with this section;

(2) where an *investment* is purchased:

transaction cost = (EP-AP) x (units); and

(3) where an *investment* is sold:

transaction cost = (AP-EP) x (units).

Arrival Price (AP)

19.8.10 R A *firm* must determine the arrival price as follows:

(1) for a *transferable security*, or other *investment* which there are frequent opportunities to dispose of, redeem, or otherwise realise at a price publicly available to market participants that is either a market price or a price made available or validated by valuation systems independent of the *issuer*:

(a) the market mid-price at the time the order was transmitted to another *person* for execution or was executed, whichever is earlier

(b) if no such price is available, then the last available mid-price on the day the order was *executed*, or, if this is not available, the closing mid-price on the day before; or

(c) if the order to transact was executed on a day other than the day it was transmitted to another *person* for execution, the market opening mid-price on the day of execution, or, if this is not available, the closing mid-price the day before; or

(d) if the order was *executed* during an auction, the most recently available mid-price of the asset prior to the auction; or

(e) if an order is transmitted to another *person* for execution outside trading hours, the subsequent market opening mid-price.

(2) for an investment fund or other vehicle priced on a periodic basis:

(a) for a dual-priced vehicle, the fair value mid-price of the vehicle at the pricing point when the transaction took place; or

(b) for a single-priced vehicle, the fair value price of the vehicle at the pricing point when the transaction took place, prior to any dilution adjustment.

(3) for physical (in other words, real or tangible) assets, the price paid for that physical asset, excluding all charges, commissions, taxes and other payments associated with the transaction.

for any other *investment* which does not fall into (1), (2) or (3):

(a) the most recent independent valuation prior to the order to transact being executed, or, if earlier, transmitted to another

person for execution, adjusted appropriately for market movements using an appropriate benchmark index; or

(b) if no such valuation is available, then an estimate based on a reasonable appraisal of the fair value of the asset prior to the order to transact being executed.

Arrival Price (AP): supplemental provision for multiple orders on the same day

19.8.11 R Where an order is split into multiple orders ('child orders') in the same *investment* and transmitted on the same day, the arrival price of the first child order must be used as the arrival price of all subsequent child orders on that day.

Arrival Price (AP): supplemental provision for initial public offerings, placings and other issuance of securities

19.8.12 R For orders in initial public offerings, placings and other issuance of securities, the transaction price must be used as the arrival price.

Arrival Price (AP): supplemental provisions for derivatives

19.8.13 R When determining the arrival price for a *derivative* where there is no publicly available price, a firm must determine the fair value price of the *derivative*.

19.8.14 G

(1) When considering the basis for determining transaction costs relating to *derivatives*, a *firm* should take into account:

(a) the existence of any multiplier or scalar in arriving at the correct number of units;

(b) the nature of the *derivative*;

(c) the availability and transparency of prices of the *derivative* itself;

(d) where applicable, the nature and value of the assets underlying the *derivative*, including their price transparency and relative proportions within that *derivative*; and

(e) any other costs associated with the *derivative*.

(2) When determining the fair value price, a firm should adopt a fair value approach in line with prevailing market conventions.

Arrival Price (AP): supplemental provision for foreign exchange

19.8.15 R A *firm* must, in relation to a transaction involving foreign exchange, determine the arrival price using a reasonable estimate of the consolidated price rather than the price available from a single counterparty or foreign exchange platform, even if an agreement exists to undertake all foreign exchange transactions with a single counterparty.

Arrival Price (AP): supplemental provision for over the counter bond transactions

19.8.15A R Where a bond transaction is *executed* on an *over the counter* basis after *bid prices* and *offer prices* have been obtained from more than one potential counterparty, the arrival price must be taken to be:

(1) if the best *bid price* is below the best *offer price*, the mid-point between the best *bid price* and the best *offer price*;

(2) if the best *bid price* is higher than the best *offer price*, the best *bid price* in the case of a sale or the best *offer price* in the case of a purchase; or

(3) if the best *bid price* is equal to the best *offer price*, that price.

19.8.15B R Where a bond transaction is *executed* on an *over the counter* basis after either a *bid price* or an *offer price* has been obtained, the arrival price must be estimated as follows:

(1) by reference to the bid/offer spread on transactions in bonds with similar characteristics to the bond in question; or

(2) by reference to a composite of indicative bid and offer quotes; or

(3) by any other reasonable method.

Execution Price (EP)

19.8.16 R A *firm* must determine the execution price as the price at which a transaction is executed including all charges, commissions, taxes and other payments associated with the transaction, directly or indirectly, where those payments are made from the assets of the arrangement or of any *investment* in which the arrangement is directly or indirectly invested.

Calculation of transaction costs for lending and borrowing transactions

19.8.17 R A *firm* must calculate the transaction cost of a loan transaction as the difference between the charge paid by the ultimate borrower in relation to that loan and the amount received by the arrangement (or underlying *investment*).

19.8.18 G The amounts used to calculate the transaction cost of a loan transaction should include all fees, commissions, charges and other costs levied by intermediaries involved in the transaction regardless of the legal structures involved.

19.8.19 R To determine the transaction cost of a borrowing transaction, a *firm* must use the amount paid for the loan.

Aggregation

19.8.20 R The *firm* must aggregate and disclose, separately, the following transaction costs for each arrangement or *investment* and period to which the request relates:

(1) the sum of the transaction costs for buy and sell transactions factoring in anti-dilution mechanisms (see ■ COBS 19.8.21R); and

(2) the sum of the transaction costs for lending and borrowing transactions.

Treatment of anti-dilution mechanisms

19.8.21 R Subject to ■ COBS 19.8.22R, a *firm* using an anti-dilution mechanism in connection with an arrangement or *investment* may factor this into the aggregate transaction costs calculation as follows:

(1) where a levy is used, the monetary value of that levy may be subtracted from the aggregate transaction costs; and

(2) where an adjustment is made by enabling further investment into or redemption from an *investment*, the value of the benefit accruing to the *investment* may be subtracted from the aggregate transaction costs.

19.8.22 R When aggregating transaction costs, a *firm* must not subtract any portion of a benefit derived from an anti-dilution mechanism that would reduce the aggregate transaction cost below zero.

19.8.23 G A *firm* may provide information about the total benefit derived from an anti-dilution mechanism as part of or alongside the breakdown of identifiable transaction costs.

19.9 Pension annuity comparison information

Definitions

19.9.1 R In this section:

(-1) an "enhanced annuity" refers to a *pension annuity* that pays a higher level of income due to a *retail client's* health or lifestyle;

(1) "guaranteed minimum pension" has the meaning in section 8(2) of the Pension Schemes Act 1993;

(2) a "guaranteed quote" is a quote that:

(a) is provided by a *firm* to a *retail client* for the purchase of a *pension annuity*; and

(b) is based on sufficient information to successfully underwrite the proposed *pension annuity*;

(2A) an "income quote" is a guaranteed quote that offers at least the level of annual income requested by a *retail client*;

(3) a "market-leading *pension annuity* quote" is a quote for a *pension annuity* that:

(a) is generated by a *firm* by searching for, obtaining and comparing, *pension annuities* that are available to the *retail client* from across all of the *pension annuity* market using:

(i) the same information as the *firm* has used to generate a guaranteed quote; or

(ii) answers obtained from the *retail client* which allow the *firm* to determine whether the *client* may be eligible for an enhanced annuity, where the *firm* itself cannot generate an enhanced annuity quote using those answers; and

(b) provides the *retail client* with either:

(i) the highest annual income from amongst all of the quotes generated under (a); or

(ii) (in the case of an income quote) at least the amount of annual income requested by the *retail client* at the lowest purchase price from amongst all of the quotes generated under (a).

(4) "pension-related benefit" means one or more of the following:

(a) an existing or future entitlement to a *guaranteed annuity rate*;

(b) an entitlement to a *pension commencement lump sum* that exceeds 25% of the value of the *retail client's* benefit under the

occupational pension scheme, *personal pension scheme* or *stakeholder pension scheme* in which the *retail client* has an interest;

(c) an existing or future entitlement to a guaranteed minimum pension; or

(d) section 9(2B) rights;

(5) "*pension annuity* comparator information" means the information that a *firm* must provide under this section; and

(6) [deleted]

(7) "section 9(2B) rights" has the same meaning as in regulation 2(1) of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015.

Application

19.9.2 R This section applies to a *firm* that:

(1) provides a *retail client* with a guaranteed quote for a *pension annuity*; or

(2) is asked by another *firm* ("F") for a quote for a *pension annuity* where F is seeking a quote for the purposes of generating a market-leading *pension annuity* quote.

Purpose

19.9.3 G This section specifies:

(1) when a *firm* must provide:

(a) a *retail client* with *pension annuity* comparator information, including whether the *pension annuity* it is offering will provide:

(i) more or less annual income than the market-leading *pension annuity* quote; or

(ii) (in the case of an income quote) at least the amount of annual income requested by the *retail client* at the lowest purchase price; and

(b) a quote to another *firm* seeking a quote for the purposes of the other *firm* generating a market-leading *pension annuity* quote;

(2) how a *firm* must compare a guaranteed quote and a market-leading *pension annuity* quote and how any applicable pension-related benefits should be factored into the comparison; and

(3) the content and format of the *pension annuity* comparator information that must be provided in different circumstances; and

(4) when a *firm* must ask questions about the *retail client's* eligibility for an enhanced annuity.

Content of pension annuity comparator information

19.9.4 R When providing a guaranteed quote to a *retail client* a *firm* must use the relevant template in ■ COBS 19 Annex 3R to provide:

(1) the following information about the features of the *pension annuity* that is being offered:

(a) the cost of the *pension annuity* where the cost is expressed as a single sum in pounds sterling net of any *adviser charges*;

(b) if applicable, the amount and details of any *adviser charges* that the *firm* will be paying;

(c) if applicable, the amount of any *commission* that will be paid and to whom any such *commission* will be paid;

(d) the annual income the *pension annuity* will provide to the *retail client* expressed as a single sum in pounds sterling;

(e) whether the annual income referred to in ■ COBS 19.9.4R(1)(d) is guaranteed for any period of time and, if so, the duration of that period;

(f) the frequency of payments that will be made to the *retail client* and if such payments will be paid in advance or in arrears;

(g) whether the *pension annuity* will provide an annuity to only the *retail client* or to the *retail client* and another beneficiary; and

(h) whether the annual income offered by the *pension annuity* will increase in value over time and, if so, the basis upon which it will increase;

(2) if applicable, information about:

(a) the *guaranteed annuity rate* that a *retail client* is already entitled to or will be entitled to in the future;

(b) the date from when the *guaranteed annuity rate* is payable; and

(c) the annual income that a *retail client* can reasonably expect to receive pursuant to the *guaranteed annuity rate*;

(3) if applicable, information about:

(a) the annual income that a *retail client* is already, or in the future will be, entitled to pursuant to either or both a right to a guaranteed minimum pension or section 9(2B) rights; and

(b) the date from when that annual income is payable;

(4) if applicable, information about the maximum *pension commencement lump sum* that the *retail client* is entitled to and whether that lump sum would represent more than 25% of the value of the *retail client's* benefit under the *occupational pension scheme*, *personal pension scheme* or *stakeholder pension scheme* in which the *retail client* has an interest;

(5) the helpline phone number and the website address for *MoneyHelper* and an explanation that the phone number and website can be used to obtain *pension annuity* quotes from other *pension annuity* providers;

(6) if applicable, information about how a *retail client's* health or lifestyle may entitle the *retail client* to a *pension annuity* that pays a higher income (an enhanced annuity); and

(7) the comparison information required under ■ COBS 19.9.7R.

19.9.5 G A *firm* should consider ■ COBS 19.9.12R in cases where it is not clear whether a *retail client* is entitled to a pension-related benefit.

Exceptions from the requirement to provide the information required by COBS 19.9.4R

19.9.6 R

(1) The requirement to provide the information required by ■ COBS 19.9.4R and the related requirement in ■ COBS 19.9.7R does not apply to a *firm*:

(a) if that *firm* ("F1") is reasonably satisfied that:

(i) the *retail client* has already received the information required by ■ COBS 19.9.4R from another *firm* ("F2"); and

(ii) the information provided by F2 to the *retail client* relates to the same guaranteed quote that F1 would otherwise use as the basis for providing the information required by ■ COBS 19.9.4R; or

(b) in any case where a *firm*, during the same telephone conversation, provides a *retail client* with more than one guaranteed quote.

(2) Where (1)(b) applies, a *firm* must comply with ■ COBS 19.9.4R if:

(a) the *retail client*, during the same telephone conversation, selects one of the guaranteed quotes to explore further; or

(b) the *retail client* subsequently contacts the *firm* to explore further one of the guaranteed quotes ("Q1") that the *firm* has previously provided where Q1 was not, at the time it was provided, accompanied by the information required by ■ COBS 19.9.4R.

Eligibility for enhanced annuities

19.9.6A R

(1) When a *firm* generates a market-leading *pension annuity* quote it must take reasonable steps to obtain from the *retail client* answers to the questions that are required to determine whether the *client* is eligible for an enhanced annuity.

(2) If the *retail client* is eligible for an enhanced annuity the *firm* must generate a market-leading quote for an enhanced annuity.

(3) *Firms* may only use the information gathered in (1) for the purposes of:

(a) generating a guaranteed quote and a market-leading *pension annuity* quote;

(b) assisting another *firm*, on request, to generate a market-leading quote (■ COBS 19.9.9R); and

(c) underwriting, administering, and entering into a contract for an enhanced annuity;

unless the *retail client* consents to it being used for other purposes.

(4) If the *retail client* refuses to answer a *firm's* questions that are required to determine whether the *retail client* is eligible for an enhanced annuity, a *firm* must:

(a) generate a market-leading *pension annuity* quote using the same information that it used to generate its guaranteed quote; and

(b) compare the market-leading *pension annuity* quote referred to in (a) with its guaranteed quote.

19.9.6B G For the purpose of ■ COBS 19.9.6AR, examples of the sorts of health and lifestyle circumstances which may indicate that a *retail client* is eligible for an enhanced annuity are:

(1) whether the *client* is or was a smoker;

(2) the *client's* height, weight and waist size and whether these are outside normal ranges;

(3) the number of units of alcohol the *client* consumes per week;

(4) whether the *client* is taking medication for high blood pressure or high cholesterol;

(5) whether the *client* is taking medication for serious health conditions.

19.9.6C G

(1) The *guidance* in this section relates to a *firm's* obligations to provide a market-leading *pension annuity* quote in ■ COBS 19.9.6AR(4).

(2) A *firm* may consider it appropriate to include in the quote provided to the *retail client* a statement that the *client* may have health or lifestyle factors that could mean that they are eligible for a higher income. For example, the wording in the "Did you know?" box in the template in Part 3 of ■ COBS 19 Annex 3R could be adapted to reflect the fact that a *client* has refused to answer questions about their health or lifestyle.

Information comparing a guaranteed quote and a market-leading pension annuity quote

19.9.7 R A *firm* must:

(1) generate a market-leading *pension annuity* quote before providing a guaranteed quote to a *retail client*;

(2) unless (2A) applies, determine which of the following will, or is most likely to, offer a *retail client* the highest annual income:

(a) the *pension annuity* offered by the guaranteed quote ("A");

(b) the *pension annuity* offered by the market-leading *pension annuity* quote ("B");

(c) if applicable, the pension that a *retail client* is entitled to, or will be entitled to, pursuant to the *retail client's* entitlement to a *guaranteed annuity rate* ("C"); or

(d) if applicable, the minimum pension that a *retail client* is entitled to, or will be entitled to, pursuant to the *retail client's* entitlement to either or both a guaranteed minimum pension or section 9(2B) rights ("D");

in cases where a *retail client* has requested an income quote, determine which of the following will, or is most likely to, offer a *retail client* with at least the annual income that the *retail client* has requested at the lowest purchase price:

(a) the *pension annuity* offered by the guaranteed quote ("A1");

(b) the *pension annuity* offered by the market-leading pension annuity quote ("B1"); or

(c) if applicable, the pension that the *retail client* is entitled to, or will be entitled to, pursuant to their entitlement to a *guaranteed annuity rate* ("C1");

(3) use the template in:

(a) Part 1 of ■ COBS 19 Annex 3R where (2) applies and B offers a *retail client* the highest annual income;

(b) Part 2 of ■ COBS 19 Annex 3R where (2) applies and A, C or D offers a *retail client* the highest annual income;

(c) Part 4 of ■ COBS 19 Annex 3R where (2A) applies and B1 offers a *retail client* at least the annual income that the *retail client* has requested at the lowest purchase price; or

(d) Part 5 of ■ COBS 19 Annex 3R where (2A) applies and A1 or C1 offers a *retail client* at least the annual income that the *retail client* has requested at the lowest purchase price;

(4) where (2) applies and B offers the highest annual income:

(a) calculate as a single sum in pounds sterling the amount by which B provides a higher annual income than A;

(b) include that amount in the relevant place in the template; and

(c) include a statement making it clear that a *retail client* could obtain a higher annual income by searching the open market for a *pension annuity*;

(4A) where (2A) applies and B1 offers at least the requested annual income at the lowest purchase price:

(a) calculate as a single sum in pounds sterling the difference in purchase price between A1 and B1;

(b) include that amount in the relevant place in the template; and

(c) include a statement making it clear that the *retail client* could obtain at least the requested annual income at a lower purchase price by searching the open market for a *pension annuity*;

(5) where (2) applies and A offers the highest annual income, include a statement that A will provide the *retail client* with the highest annual income; and

(5A) where (2A) applies and A1 offers at least the requested annual income at the lowest purchase price, include a statement that A1 will provide the *retail client* with at least the requested annual income at the lowest purchase price;

(6) if applicable, where (2) applies and C or D will, or is likely to, provide the highest annual income:

(a) calculate as a single sum in pounds sterling the amount by which C or D, as applicable, will, or is likely to, provide a higher annual income than A;

(b) include that amount in the relevant place in the template; and

(c) warn the *retail client* that:

(i) the entitlement to, as applicable, C or D, will be extinguished if the *retail client* accepts A; and

(ii) accepting A will result in the *retail client* receiving a lower annual income than the *retail client* is entitled to pursuant to, as applicable, C or D.

(7) where (2A) applies and C1 will, or is likely to, provide at least the requested annual income at the lowest purchase price:

(a) calculate as a single sum in pounds sterling the difference in purchase price between A1 and C1;

(b) include the amount in (a) in the relevant place in the template; and

(c) warn the *retail client* that:

(i) the entitlement to C1 will be extinguished if the *retail client* accepts A1; and

(ii) accepting A1 will result in the *retail client* paying a higher purchase price than that payable if the *retail client* exercises their entitlement to C1;

(8) where (2A) applies and either A1 or B1 offers the *retail client* at least the requested annual income at the lowest purchase price, a *firm* must determine whether the *retail client's* entitlement to a *guaranteed annuity rate* can be applied to offer a better value annuity compared to the lowest purchase price annuity on offer and, if so, warn the *retail client* accordingly.

19.9.7A G An example of where a *firm* may need to provide a warning of the kind referred to in COBS 19.9.7R(8) is where a *retail client* ('R') is seeking an annuity of £5,000 and the lowest purchase price for such an annuity is £100,000. If R's entitlement to a *guaranteed annuity rate* can be used to provide R with an annuity of £15,000, albeit at a cost of £200,000, the *firm* should warn R of this possibility. Where applicable, such a warning should be included in the relevant template and may also be given orally.

19.9.8 G When a *firm* is required to generate a market-leading *pension annuity* quote it may use:

(1) the facility on the *MoneyHelper* website available on https://www.moneyhelper.org.uk/guaranteed-income; or

(2) software, or any other means, that will enable the *firm* to search for, obtain and compare *pension annuities* available to the *retail client* from across all of the *pension annuity* market.

Requirement to provide another firm with information pursuant to COBS 19.9.4R(7) and COBS 19.9.7R

19.9.9 R A *firm* ("F1") must take reasonable steps to provide any information requested of it by another *firm* ("F2") where such information is requested in order for F2 to comply with its obligations under COBS 19.9.4R(7) and the related requirement in COBS 19.9.7R.

19.9.10 G A *firm* is reminded that when complying with the requirement in ■ COBS 19.9.9R it should do so in a way that is consistent with its obligations under competition law.

Pension commencement lump sum

19.9.11 R

(1) This *rule* applies if a *retail client* is entitled to a *pension commencement lump sum* that would amount to more than 25% of the value of the *retail client's* benefit under the *occupational pension scheme*, *personal pension scheme* or *stakeholder pension scheme* in which the *retail client* has an interest.

(2) A *firm* must warn the *retail client* if the *pension annuity* offered by:

(a) the guaranteed quote; or

(b) the market-leading *pension annuity* quote,

will, if accepted, reduce the *pension commencement lump sum* that a *retail client* would otherwise be entitled to receive.

Information about pension-related benefits

19.9.12 R

(1) This *rule* applies where a *retail client* is unable to confirm an entitlement to a pension-related benefit.

(2) This *rule* does not apply if a *firm* is the *retail client's* current provider of a pension-related benefit.

(3) A *firm* must take reasonable steps to assist a *retail client* ascertain whether the *retail client* is entitled to a pension-related benefit.

(4) If, despite having taken reasonable steps under (3), it remains unclear whether a *retail client*:

(a) is entitled to a *guaranteed annuity rate*, a *firm* must proceed as if the requirement in ■ COBS 19.9.4R(2) is not applicable;

(b) is entitled to a guaranteed minimum pension, a *firm* must proceed as if the requirement in ■ COBS 19.9.4R(3) relating to information about a guaranteed minimum pension is not applicable;

(c) has section 9(2B) rights, a *firm* must proceed as if the requirement in ■ COBS 19.9.4R(3) relating to information about section 9(2B) rights is not applicable; or

(d) is entitled to a *pension commencement lump sum*, a *firm* must proceed as if the requirement in ■ COBS 19.4.4R(4) is not applicable.

19.9.13 G

(1) ■ COBS 19.9.12R is likely to apply where a *retail client* does not know, or cannot recall, if the *retail client* is entitled to a pension-related benefit.

(2) A *firm* may wish to consider doing any of the following as part of taking reasonable steps to assist a *retail client* ascertain whether the *retail client* is entitled to a pension-related benefit:

(a) suggesting the *retail client* locate any documentation which may contain relevant information about a pension-related benefit; and

(b) encouraging the *retail client* to contact their existing pension provider for relevant information relating to a pension-related benefit.

(3) ■ COBS 19.9.12R does not apply to a *firm* that is a *retail client's* current pension-related benefit provider because that *firm* will be in possession of information relevant to determining whether a *retail client* is entitled to a pension-related benefit.

Retail client's consent to generate a market-leading pension annuity quote

19.9.14 G Before generating a market-leading *pension annuity* quote a *firm* should consider whether it needs the consent of the *retail client* to use any personal data for the purposes of generating the quote.

19.9.15 R

(1) This *rule* applies to a *firm* where the *firm* requires the *retail client's* consent to the *firm* generating, on behalf of the *retail client*, a market-leading *pension annuity* quote and that consent is not obtained.

(2) A *firm* must take reasonable steps to obtain a *retail client's* consent referred to in paragraph (1).

(3) Where a *firm*, having complied with (2), has been unable to obtain the *client's* consent, this *rule* applies with the effect that:

(a) ■ COBS 19.9.4R(7), ■ COBS 19.9.7R and ■ COBS 19.9.6AR(4) do not apply;

(b) a *firm* must include information, as applicable, warning the *retail client* that:

(i) a higher annual income might be obtained; or

(ii) at least the requested annual income might be obtained for a lower purchase price;

by searching the open market for a *pension annuity*; and

(c) a *firm* must, as applicable, use the template in Part 3 or Part 6 of ■ COBS 19 Annex 3R to provide the applicable *pension annuity* comparator information.

Medium of disclosure

19.9.16 R

(1) A *firm* must provide the *pension annuity* comparator information in a *durable medium* or make the information available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

(2) If the requirement to provide the *pension annuity* comparator information arises during a telephone conversation with a *retail client*, a *firm* must:

(a) orally provide the *pension annuity* comparator information over the telephone;

(b) provide the *pension annuity* comparator information in a *durable medium* or make the information available on a website (where

that does not constitute a *durable medium*) that meets the *website conditions*; and

(c) conclude a sale of a *pension annuity* only if the *retail client* agrees to receiving the *pension annuity* comparator information referred to in (b) after the sale has been concluded.

(3) If a *firm* provides the *pension annuity* comparator information on paper, it must use a single sheet of A4 paper.

(4) The requirement in (3) to use a single sheet of paper does not apply if a *retail client* asks for the *pension annuity* comparator information to be provided in an accessible format and the fulfilment of that request will necessitate the use of more than a single sheet of A4 paper.

19.10 Drawdown, investment pathways and cash warnings

Definitions

19.10.1 R In ■ COBS 19.10:

(1) "cash-like investments" includes *cash* or *near cash*, units in a *regulated money market fund*, or units in a fund authorised as a money market fund for the purposes of the UK version of the European Parliament and Council Regulation on money market funds (2017/1131/EU), which is part of UK law by virtue of the *EUWA*;

(2) "cash warning" is the warning in ■ COBS 19.10.38R;

(3) "drawdown fund" means either a *capped drawdown pension fund* or *flexi-access drawdown pension fund*;

(4) a *retail client* is a "non-advised *retail client*" if a *firm* has not determined, on reasonable grounds, that the client has received a *personal recommendation* in relation to how to invest the sums or assets in their drawdown fund, in accordance with ■ COBS 19.10.10R(4);

(5) "pathway investments exempt firm" is a *firm* which:

(a) has elected not to offer *pathway investments*; and

(b) is satisfied on reasonable grounds that it is more likely than not to have fewer than 500 of its non-advised *retail clients* designate funds to a drawdown fund in the 12 *months* following the date of the election in (a), taking into account:

(i) the number of non-advised *retail clients* who designated funds to a drawdown fund in the preceding 12 *months*;

(ii) the potential impact of any change in the *firm's* business plans over the next 12 *months*; and

(iii) any other relevant factors;

(6) references to a *firm* "offering" the *retail client* a *pathway investment* mean that the investments are either:

(a) *manufactured* by the *firm* (F1); or

(b) *manufactured* by another *firm* (F2);

and are available for investment in the drawdown fund operated by F1.

(7) references to a *firm* (F1) "referring" the *retail client* to a *firm* (F2) offering a *pathway investment* mean that F1 arranges for F2 to give

the *retail client* the opportunity to invest in a *pathway investment* available through transfer to the drawdown fund operated by F2, where F2 offers *pathway investments* in accordance with (6)(a) above.

Who?

19.10.2 R This section applies to an *operator* of a *retail client's personal pension scheme* or *stakeholder pension scheme*.

19.10.3 G The application of this section is modified for a pathway investments exempt firm.

19.10.4 R

(1) A pathway investments exempt firm must review its status at least once every 12 *months*.

(2) Any change to a *firm's* status as a pathway investments exempt firm must take effect within 12 *months* of the review date.

Purpose

19.10.5 G The purpose of this section is to help non-advised *retail clients* designating some or all of the funds in their *pension schemes* into a drawdown fund to make an active decision about how to invest those drawdown funds to achieve their retirement objectives.

19.10.6 G This section specifies the circumstances where a *firm* dealing with a non-advised *retail client* in relation to the investment of the sums or assets in their drawdown fund must:

give the *retail client* the opportunity to use the *investment pathways*;

offer the *retail client* a *pathway investment* or refer the *retail client* to a *firm* that offers *pathway investments*;

ensure that *retail clients* investing wholly or predominantly in cash-like investments make an active decision to do so; and

provide warnings to *retail clients* investing wholly or predominantly in cash-like investments;

remind *clients* about their option to shop around and use *pensions guidance*.

19.10.7 G This section does not absolve *firms* of their obligation, when communicating with *retail clients* about their drawdown fund options, to provide such information as is necessary for the *retail client* to make an informed decision, including (where relevant) the information listed in ■ COBS 19.4.14R.

When?

19.10.8 R Subject to ■ COBS 19.10.10R, a *firm* must take the steps in this section when a *retail client* requests to:

(1) designate some, or all, of the sums or assets in their *pension scheme* to a drawdown fund; or

(2) transfer sums or assets already in drawdown into a drawdown arrangement provided by the *firm*.

19.10.9 G ■ COBS 19.10.8R(2) applies to a drawdown provider when a *retail client* requests to transfer sums to the drawdown provider from another provider. It also applies, for example, when a *retail client* requests to transfer sums into a new drawdown arrangement at the end of a fixed-term arrangement with the same drawdown provider.

19.10.10 R The requirements in this section do not apply to a *firm*:

in relation to sums or assets in a *retail client's pension scheme* that the *retail client* requests to use to purchase a fixed-term product that:

(a) provides a guaranteed income, a guaranteed capital return or both, to the *retail client* or the *retail client's* beneficiary; and

(b) does not involve any investment risk to the *retail client* if the *retail client* remains in the product for the fixed term;

when the *firm* carries out the *retail client's* previous instructions to designate their funds on a regular basis into a drawdown fund;

when the *retail client* has been taken through the *investment pathways* by another *firm* (F1) and has been referred to the *firm's* (F2's) drawdown fund to invest in one of the *pathway investments* that the *firm* (F2) offers (see ■ COBS 19.10.1R(7)); or

when the *firm* has determined, on reasonable grounds, that the *retail client* has received a *personal recommendation* in relation to the action referred to in ■ COBS 19.10.8R(1) or ■ (2).

19.10.11 G ■ COBS 19.10.10R(1) applies where a *retail client* requests to purchase a fixed-term product, in which the only income or return is intended to be regular income, a capital return or both (payable to the client or the client's beneficiary), with amounts guaranteed and specified at the time the product is purchased. *Firms* may nonetheless agree terms permitting ad hoc withdrawals or early exit, which may or may not be subject to guarantees, with *retail clients* purchasing these products.

19.10.12 G A *firm* will not have reasonable grounds for the purpose of ■ COBS 19.10.10R(4) if the determination is based solely on information that:

(1) is over 12 *months* old;

(2) the *retail client* is in, or transferring from, an advised product; or

(3) the *retail client* continues to provide *remuneration* to an *adviser* in relation to their *pension scheme* or drawdown fund.

19.10.13 G However, a *firm* could have reasonable grounds for the purpose of ■ COBS 19.10.10R(4) if the *retail client* continues to provide *remuneration* to an *adviser* in relation to their *pension scheme* or drawdown fund and the *firm* has reminded the *retail client* of this:

(1) including an explanation of what this means in the context of the *retail client's* request referred to in ■ COBS 19.10.8R;

(2) in a *durable medium*; and

(3) within a reasonable time before the *firm* carries out the *retail client's* request referred to in ■ COBS 19.10.8R.

Step 1: offer use of investment pathways

19.10.14 R The first step is to ask the *retail client* how they want to select the *investment* for their drawdown fund from the following options:

(1) use the *investment pathways* (option 1);

(2) select investments without using the *investment pathways* (option 2); or

(3) (where applicable) remain invested in their current investments (option 3).

19.10.15 R The option to use *investment pathways* must be presented with equal prominence to options 2 and 3.

19.10.16 R If a *retail client* selects option 1, or the *retail client* is unsure about the option to select, or the *firm* is unsure about which option the *retail client* has selected, the *firm* must proceed to step 2.

Step 2: present investment pathway options

19.10.17 R The second step is to:

(1) present the *retail client* with the following *investment pathway* options:

(a) Option 1: I have no plans to touch my money in the next 5 years;

(b) Option 2: I plan to use my money to set up a guaranteed income (annuity) within the next 5 years;

(c) Option 3: I plan to start taking my money as a long-term income within the next 5 years;

(d) Option 4: I plan to take out all my money within the next 5 years; and

(2) ask the *retail client* to select an *investment pathway* option that corresponds most closely to their current intentions.

19.10.18 R A *firm* must not present any other investment options to the *retail client* during step 2 of *investment pathways*.

19.10.19 R If a *retail client* selects an *investment pathway* option, the *firm* must proceed to step 3.

19.10.20 G If, after the *firm* completes step 2, the *retail client* does not select an *investment pathway* option the *firm* should:

(1) consider providing the *retail client* with the opportunity to view the *investment pathways* options again or ask if the *retail client* requires further information to make a decision;

(2) provide a clear and prominent statement about the availability of advice and *pensions guidance*; and

(3) provide the *retail client* with the information in ■ COBS 19.10.30R, if applicable.

Step 3: offer pathway investments

19.10.21 R (1) The third step is for the *firm* to:

(a) offer the *retail client* a *pathway investment* that corresponds to the *investment pathway* option selected in step 2; or

(a) refer the *retail client* to a *firm* that offers a *pathway investment* that corresponds to the *investment pathway* option selected in step 2; or

(a) (for pathway investments exempt firms only) refer the *retail client* to the *MoneyHelper investment pathways* comparison tool, available on https://www.moneyhelper.org.uk/pathways;

(b) describe to the *retail client*, using plain language, the level of riskiness of each *pathway investment* (whether offered by that *firm* or by a *firm* to which they refer *retail clients*); and

(c) provide the *retail client* with a clear and prominent statement:

(i) that other *firms* offer *pathway investments* for the *investment pathway* option selected by the *retail client* and that the *retail client* may benefit from shopping around, with an explanation of how they may do so; and

(ii) that *MoneyHelper* is available to assist the *retail client* with shopping around for *pathway investments* with an explanation of how they may access *MoneyHelper* and the *MoneyHelper investment pathways* comparison tool, available on https://www.moneyhelper.org.uk/pathways.

(2) A pathway investment exempt firm need only do (1)(a)(ii) or (iii) and (1)(b) and (c).

19.10.22 G If after the *firm* completes step 3 the *retail client* does not select a *pathway investment* the *firm* should:

(1) consider providing the *retail client* with the opportunity to view the *investment pathways* options again or ask if the *retail client* requires further information to make their decision;

(2) remind the *retail client* that they can shop around and explain how they can do that;

(3) provide a clear and prominent statement about the availability of advice and *pensions guidance*; and

(4) provide the *retail client* with the information in ■ COBS 19.10.30R, if applicable.

19.10.23 G If after the *firm* completes step 3 the *retail client* does not select a *pathway investment* the *firm* may offer other investments and tools the client may use when deciding how to invest their drawdown fund.

Preparing for step 3

19.10.24 R To prepare for step 3:

(1) a *firm* (excluding pathway investments exempt firms) must be in a position to:

(a) offer, or refer to other *firms* offering, a *pathway investment* for each of the *investment pathway* options (see ■ COBS 19.10.1R(7) on referring); and

(b) offer *pathway investments* for at least two *investment pathway* options;

(2) *firms* may offer, or refer to other *firms* offering, the same *pathway investment* for more than one *investment pathway* option, but must not offer, or refer the *retail client* to other *firms* that offer, the same *pathway investment* for all *investment pathway* options;

(3) *firms* must be in a position to describe the level of riskiness of each *pathway investment*, whether offered by them or by a *firm* to which they refer *retail clients*; and

(4) pathway investments exempt firms must be in a position to either:

(a) refer clients to *pathway investments* offered at other *firms*; or

(b) refer clients to the *MoneyHelper investment pathways* comparison tool, available on https://www.moneyhelper.org.uk/pathways.

19.10.25 R *Firms* must not offer a *retail client* more than one *pathway investment*, nor refer a *retail client* to more than one *firm* offering a *pathway investment*, for any *investment pathway* option.

19.10.26 G *Firms* do not have to offer the same *pathway investment* to all *retail clients* who select the same *investment pathway* option. Example F(33) in ■ PERG 8 Annex 1 sets out some considerations for *firms* that offer different *pathway investments* in relation to the same *investment pathway* option.

19.10.27 G (1) Where a *firm* decides to change the *pathway investment* it offers in relation to a particular *investment pathway* option, the *firm* may need to consider whether it would be appropriate to transfer existing clients to that new investment.

(2) This may be the case, for example, if the transfer is required to prevent consumer harm and avoid risking a breach of our *rules*, for example *Principle* 6. This could be the case where the *firm* has determined that the *pathway investment* is no longer an appropriate

investment for the *investment pathway* option and the client is likely to suffer harm as a result.

(3) If *firms* decide to transfer existing clients to a new *pathway investment*, *firms* will need to consider the information needs of their clients, and communicate to them appropriately and in good time, in a manner that is clear, fair and not misleading.

(4) *Firms* are required to have appropriate arrangements in place (including contractual powers that are fair and transparent and comply with the CRA) to enable them to comply with their obligations under the *regulatory system*.

19.10.28 R

(1) *Firms* must label *pathway investments* clearly using the corresponding option listed in ■ COBS 19.10.17R(1).

(2) *Firms* must not label any other investments as *pathway investments* or mislead a *retail client* into thinking that another investment is a *pathway investment*.

Information, including cash warnings, for clients who have not decided to invest at least 50% of their drawdown fund in pathway investments

19.10.29 R

■ COBS 19.10.30R applies if a *retail client* has:

(1) been taken through the *investment pathway* (whether or not they proceeded to steps 2 or 3); and

(2) not decided to invest at least 50% of their drawdown fund in one or more *pathway investments*.

19.10.30 R

Before carrying out the *retail client's* request referred to in ■ COBS 19.10.8R, the *firm* must:

(1) if the *retail client* has chosen to remain in their current investments, remind the *retail client*:

(a) of their current investment strategy (where this is known to the *firm*); and

(b) to check that their current investment strategy meets their current investment objectives;

(2) subject to ■ COBS 19.10.32R, if carrying out the *retail client's* request referred to in ■ COBS 19.10.8R would result in more than 50% of the *retail client's* drawdown fund being invested in cash-like investments:

(a) ensure that the *retail client* has made an active decision to invest in cash-like investments; and

(b) provide the *retail client* with a cash warning;

(3) remind the *retail client* that they can shop around and how to do that, including the option of using the *MoneyHelper investment pathways* comparison tool, available on https://www.moneyhelper.org.uk/pathways; and

(4) provide a clear and prominent statement about the availability of advice and *pensions guidance*.

19.10.31 G A *retail client's* signature on a pre-populated form, whether in paper or electronic format, is not, by itself, sufficient evidence of an active decision to invest in cash-like investments.

19.10.32 R

(1) ■ COBS 19.10.30R(2) does not apply where a *retail client* has given a *discretionary investment manager* or a financial adviser permission to *execute* investment decisions, and the sums or assets covered by this permission comprise more than 50% of the *retail client's* drawdown fund.

(2) When ascertaining whether more than 50% of the *retail client's* drawdown fund is invested in cash-like investments, a *firm* may ignore sums or assets in relation to which a *discretionary investment manager* or a financial advisor has permission to *execute* investment decisions. A *firm* exercising this option must take the steps in ■ COBS 19.10.30R(2) if the client's decision would result in more than 50% of the remainder of the drawdown fund being invested in cash-like investments.

(3) If it is not possible for the *firm* to identify the assets in a *retail client's* drawdown fund, despite making all reasonable efforts, a *firm* may take into account all investments in the *retail client's personal pension scheme* or *stakeholder pension scheme*. In such a case, a *firm* must take the steps in ■ COBS 19.10.30R(2) if the client's decision would result in more than 50% of the value of the client's *personal pension scheme* or *stakeholder pension scheme* being invested in cash-like investments.

19.10.33 G To ascertain whether more than 50% of a *retail client's* drawdown fund is invested in cash-like investments, a *firm* should take reasonable steps to obtain up-to-date information, and should use the most recent information it has access to.

Ongoing cash warnings

19.10.34 R When a *firm* has given a *retail client* a cash warning pursuant to ■ COBS 19.10.30R(2)(b) or ■ TP 2.8GR, the *firm* must give the client a cash warning at least annually thereafter, while the client remains so invested and remains a non-advised client.

19.10.35 G When considering whether to send an annual cash warning, a *firm* may, but is not obligated to, reassess whether a *retail client* has received a *personal recommendation* in relation to how to invest the sums or assets in their drawdown fund, in accordance with ■ COBS 19.10.10R(4).

Product governance

19.10.36 G A *firm* should ensure that it complies with the product governance requirements in *PROD* in relation to the *pathway investments* they offer.

Cash warnings

19.10.37 G This section defines a cash warning and how it must be provided. ■ COBS 19.10.30R(2)(b), ■ TP 2.8GR and ■ COBS 19.10.34R set out when a cash warning must be provided.

19.10.38 R The cash warning must:

(1) be provided in a *durable medium*;

(2) using plain language, warn the *retail client* that:

(a) more than half of their eligible drawdown fund is invested in cash-like investments; and

(b) the value of their drawdown fund is at risk of being eroded by inflation; and

(3) include a generic example (provided as an explanation, an illustration or both) of how inflation erosion would affect a £10,000 pot over 5 years, assuming 0% interest and using a measure of inflation generally accepted in the *United Kingdom*; and

(4) inform the *retail client* that if they plan to invest for the longer-term, they should consider whether their current investments are likely to grow sufficiently to meet their objectives.

19.10.39 G The *firm* should also:

(1) (if appropriate) inform the *retail client* that:

(a) this warning is not advice or a substitute for it;

(b) the value of any investment can fall as well as rise;

(2) explain to and/or illustrate for the *retail client* that different types of investment have a different balance of risk to potential gain;

(3) provide the *retail client* with a statement to the effect that (to the extent applicable) the *firm* offers *pathway investments* and other investments; and

(4) remind the *retail client* (in line with the requirements in ■ COBS 19.4) that the *retail client* can:

(a) shop around (with an explanation of how to do that);

(b) seek advice from a *FCA*-regulated financial adviser; and

(c) review information on the *MoneyHelper* website, available on https://www.moneyhelper.org.uk.

19.10.40 G In the *FCA's* view, the Consumer Prices Index is a national index of retail prices and so may be used as a measure of the current inflation rate for the purposes of ■ COBS 19.10.38R(3).

Warning on expiry of a fixed-term product

19.10.41 G This section sets out when and how warnings must be given to *retail clients* who have purchased certain fixed-term products, and what the warnings should include.

19.10.42 R ■ COBS 19.10.43R applies where:

(1) a non-advised *retail client* has purchased a fixed-term product within a *personal pension scheme* or *stakeholder pension scheme*;

(2) at the end of the fixed term, that product has a fixed cash value payable to the *retail client* or the *retail client's* beneficiary; and

(3) the *retail client* has not given the *firm* instructions to transfer the full value out of the product.

19.10.43 R The *firm* must provide the *retail client* with a warning, which must:

(1) be provided:

(a) in a *durable medium*;

(b) within 28 days of the end of the fixed term; and

(c) at least annually thereafter for so long as the value remains in the product; and

(2) in plain language, warn the client that:

(a) the fixed term of the product has expired;

(b) if applicable, no interest will accrue on the value remaining in the product; and

(c) the value remaining in the product is at risk of being eroded by inflation; and

(3) include a generic example (provided as an explanation, an illustration or both) of how inflation erosion would affect a £10,000 pot over 5 years, assuming 0% interest and using a measure of inflation generally accepted in the *United Kingdom*.

19.10.44 G The *firm* should also:

(1) if appropriate, inform the *retail client* that this warning is not advice or a substitute for it;

(2) remind the *retail client* (in line with the requirements in ■ COBS 19.4) that they can:

(a) shop around (with an explanation of how to do that);

(b) seek advice from a *FCA*-regulated financial adviser; and

(c) review information on the *MoneyHelper* website available on https://www.moneyhelper.org.uk.

19.10.45 G In the *FCA's* view, the Consumer Prices Index is a national index of retail prices and so may be used as a measure of the current inflation rate for the purposes of ■ COBS 19.10.43R(3).

Record keeping

19.10.46 R A pathway investments exempt firm must maintain a record of:

(1) the dates its exemption applies; and

(2) how the *firm* assessed that it meets the requirements for the exemption with reference to the criteria in ■ COBS 19.10.1R(5)(b).

19.10.47 G A *firm* to which the record-keeping rules in ■ SYSC 3 (Systems and controls) or ■ SYSC 9 (Record-keeping) apply should maintain a record of its compliance with the requirements in this section including:

(1) the number of advised and non-advised *retail clients* entering into drawdown arrangements with the *firm*;

(2) a record of how the *firm* determined, on reasonable grounds, that a *retail client* had received a *personal recommendation*, in accordance with ■ COBS 19.10.10R(4) (where relevant);

(3) the number of *retail clients* who chose each of the 3 options at step 1 of *investment pathways*;

(4) the number of *retail clients* who selected each *investment pathway* option at step 2;

(5) the total number of *retail clients* who did not select an *investment pathway* option after step 2;

(6) in relation to *retail clients* who did not select an *investment pathway* option after step 2, the number who:

(a) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;

(b) moved sums or assets into drawdown but remained invested in their previous investments;

(c) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected another investment offered by the *firm*.

(7) the number of *retail clients* offered each *pathway investment* at step 3;

(8) the number of *retail clients* who selected each *pathway investment* at step 3;

(9) the total number of *retail clients* who did not select the *pathway investment* offered;

(10) in relation to *retail clients* who did not select the *pathway investment* offered, the number who:

(a) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;

(b) moved sums or assets into drawdown but remained invested in their previous investments;

(c) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected another investment offered by the *firm*;

(c) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a *pathway investment* different to that offered by the *firm* in step 3;

(11) where a *firm* refers *retail clients* to another *firm's pathway investment* at step 3:

(a) the number of *retail clients* referred to another *firm's pathway investment*, broken down by *pathway investment* if more than one;

(b) the number who transferred to that *firm*;

(c) the number who did not transfer to that *firm*;

(d) in relation to *retail clients* who did not transfer, the number who:

(i) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;

(ii) moved sums or assets into drawdown but remained invested in their previous investments;

(iii) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a non-*pathway investment* offered by the *firm*;

(iv) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a *pathway investment* that did not require transferring to another *firm*;

(12) where a pathway investment exempt *firm* refers *retail clients* to the *MoneyHelper investment pathways* comparison tool at step 3:

(a) the number of *retail clients* directed to the *MoneyHelper investment pathways* comparison tool;

(b) the numbers of those *retail clients* who then transferred to another *firm*;

(c) the number of *retail clients* who did not transfer to another *firm*;

(d) in relation to *retail clients* who did not transfer, the number who:

(i) did not, as originally requested, move sums or assets into drawdown or transfer sum or assets already in drawdown;

(ii) moved sums or assets into drawdown but remained invested in their previous investments;

(iii) moved sums or assets into drawdown or transferred sum or assets already in drawdown, but selected a non-*pathway investment* offered by the *firm*;

(13) the number of *retail clients* who received a cash warning pursuant to COBS 19.10.30R(2)(b) (initial cash warning);

(4) the number of *retail clients* who received a cash warning pursuant to COBS 19.10.34R (ongoing cash warning);

(15) in relation to *retail clients* who received an initial cash warning, the number of clients who did not receive an ongoing cash warning because:

(a) they were no longer holding more than 50% of their drawdown fund in *cash-like investments*;

(b) they closed their drawdown fund or transferred to another *firm*;

(c) the *firm* assessed that the *retail client* was no longer non-advised;

(16) evidence of how each *retail client* who received an initial cash warning made an active choice, in accordance with COBS 19.10.30R(2)(a), to invest more than 50% of their drawdown fund in cash-like investments;

(17) the number of *retail clients* who received a warning pursuant to COBS 19.10.43R(1)(b) (initial warning on expiry of fixed-term fixed-income product); and

(18) the number of *retail clients* who received a warning pursuant to ■ COBS 19.10.43R(1)(c) (ongoing warning on expiry of fixed-term fixed-income product).

19.10.48 G ■ PROD 6.2.2G and ■ 6.3.4G contain further *guidance* on record-keeping for *firms manufacturing* or *distributing pathway investments*.

Pensions nudge and retirement risk warnings - steps to take

This annex belongs to COBS 19.7.

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Communications about options to access pension savings

This annex belongs to ■ COBS 19.4.

The definitions in ■ COBS 19.4.1R are applied to these tables.

Table 1: Communications required to be made by the firm at specified times

Handbook reference	Matters to be communicated	Contents of communication	When
19.4.5AR	Open market option statement	A statement satisfying the requirements of COBS 19.4.6AR, COBS 19.4.8R and COBS 19.4.10R	Trigger events specified at COBS 19.4.5AR
19.4.9R	Reminder	A statement satisfying the requirements of COBS 19.4.6R, COBS 19.4.8R and COBS 19.4.10R	At least six weeks before the *client's* intended retirement date

Table 2: Requirements for other communications

Handbook reference	Subject of communication	Contents of communication	Trigger
19.4.12R	*Pension annuity* options	Information about how the *client's* circumstances can affect *pension annuity* retirement income calculations and payments. *Firms* may also be required to provide a *key features illustration* (COBS 14.2.1R) or signpost *pensions guidance* (COBS 19.4.16R).	Any communication with a *client* about their *pension annuity* options
19.4.14R	*Drawdown pension*	Relevant information about *drawdown pension* option. A *firm* may also be required to provide a *key features illustration* (COBS 14.2.1R) or signpost *pensions guidance* (COBS 19.4.16R).	Any communication with a *client* about their *drawdown pension* options
19.4.14R	*Uncrystallised funds pension lump sum*	Relevant information about *uncrystallised funds pension lump sum* option. *Firms* may also be required to provide a *key*	Any communication with a *client* about their *uncrystallised funds pension lump sum* options

Handbook reference	Subject of communication	Contents of communication	Trigger
		features illustration (COBS 14.2.1R) or signpost *pensions guidance* (COBS 19.4.16R).	
19.4.15G	Communications about options to access pension savings	A *firm* should refer to the guidance in COBS 19.4.15G when communicating with a *client* about their options to access pension savings. *Firms* may also be required to signpost *pensions guidance* (COBS 19.4.16R) and in some circumstances provide an open market options statement (COBS 19.4.5AR(2)(d)).	Any communication with a *client* about their options to access their pension savings
19.4.18R	*Client* applies to access pension savings	A *firm* must provide a description of the tax implications unless it is provided in accordance with COBS 14.2.1R. *Firms* may be required to provide retirement risk warnings (COBS 19.7.7R). *Firms* may also be required to signpost *pensions guidance* (COBS 19.4.16R). If the *client* asks to access their pension savings for the first time the *firm* must provide an open market options statement (COBS 19.4.5AR(2)(d)).	*Firm* receives an application from a *client* to access pension savings

Format for annuity information

This annex belongs to ■ COBS 19.9.7R(3) and ■ COBS 19.9.15R(3)(c).

1	Format of bar graph in the Part 1 template		
1.1	Format of bar graph (where annual income is depicted)		
1.1.1	When a *firm* is creating the two bar graphs as set out in Part 1, the *firm* must ensure:		
	(1)	the annual income offered by the *pension annuity* in the guaranteed quote is presented on the left hand side of the two bar graphs;	
	(2)	the y-axis must:	
		(a)	start with a monetary value which is £20 below the annual income of the *pension annuity* being offered by the *firm* in the guaranteed quote;
		(b)	use a scale which clearly and fairly depicts the difference in annual income that a *retail client* will obtain if a market-leading *pension annuity* quote is accepted; and
		(c)	not include any numbers or details which are not required by the *rules* in COBS 19.9 or the provisions of this annex.
1.2	Format of bar graph in Part 4 (where the purchase price of the pension annuity is depicted)		
1.2.1	When a *firm* is creating the two bar graphs as set out in Part 4, it must ensure:		
	(1)	the lowest purchase price of the *pension annuity* offered by the market-leading quote is presented on the left-hand side of the two bar graphs with the higher purchase price in the *firm's* guaranteed quote appearing on the right-hand side;	
	(2	the y-axis must:	
		(a)	start with a monetary value which is £20 below the purchase price of the lowest *pension annuity* quote;
		(b)	use a scale which clearly and fairly depicts the difference in the purchase price of the *pension annuity* offered by the market-leading quote and the *firm's* guaranteed quote; and
		(c)	only include numbers or details which are required by the *rules* in COBS 19.9 or the provisions of this annex.

Part 1: Template for cases where the guaranteed quote does not provide highest annual income

Where the guaranteed quote does not provide the highest annual income

Firm Logo

keyfacts®

Annuity features

Purchase price **£XX,XXX**	**No guarantee** period
Paid **quarterly** in advance	Payments **increase** by 2% per year
Dependants income	*[Other key features of annuity]*

If relevant, include key information here such as:

You are entitled to a [guaranteed annuity rate][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX.

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission from your provider.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

This annuity would provide you with an annual income of:

£A,AAA

Can you get a better income from your annuity?

You may be able to get a higher Income by shopping around.

If you want to see what other options are available from other providers please visit moneyhelper.org.uk/guaranteed-Income or call 0800 138 7777.

Did you know?

If votive not already been asked questions about your health or lifestyle, answering these could get you even more income.

For example - if you've smoked tobacco, been advised by a medical professional to adjust your lifestyle to improve your health or had a medical condition requiring prescribed medication or hospital treatment- you may be entitled to more income than is quoted above.

Visit moneyhelper.org.uk/guaranteed-income or call 0800 1387777 to find out more.

Company contact details and other key information

Part 2: Template for cases where the guaranteed quote, the guaranteed annuity rate, a guaranteed minimum pension or section 9(2B) rights offer the highest annual income

Where a guaranteed quote, a guaranteed annuity rate, a guaranteed minimum pension or section 9(2B) rights offers the highest annual income

Firm Logo

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Annuity features

Purchase price **£XX,XXX**	**No guarantee** period
Paid **quarterly** in advance	Payments **increase** by 2% per year
Dependents income	*[Other key features of annuity]*

If relevant, include key information here such as:

You are entitled to a [guaranteed annuity rate][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX.

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

This annuity would provide you with an annual income of:

£A,AAA

Can you get a better income from your annuity?

Based on your key information, our quote is the highest available to you.

Or in the event that the consumer is entitled to a guaranteed annuity rate or minimum level of guaranteed pension which is higher:

You are entitled to a [guaranteed annuity rate from your current pension provider] [minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX. If you select our product, you could be **losing out on £DD per year.**

The Financial Conduct Authority is a financial services regulator. It requires us to inform you that you can shop around if you want to. If you want to see what other options are available from other providers please visit moneyhelper.org.uk/guaranteed-income or call 0800138 7777.

Company contact details and other key information

Part 3: Template for cases where the a retail client refuses to answer questions to determine whether the client is eligible for an enhanced annuity, or does not consent to a market-leading quote being generated

Where the retail client refuses to answer questions to determine whether the client is eligible for an enhanced annuity, or appropriate consent has not been given to allow a firm to generate a market-leading quote

Firm Logo

keyfacts®

Annuity features

Purchase price £XX,XXX	No guarantee period
Paid quarterly in advance	Payments increase by 2% per year
Dependents income	*[Other key features of annuity]*

If relevant, include key information here such as:

You are entitled to a [guaranteed annuity rate][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX.

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission from your provider.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

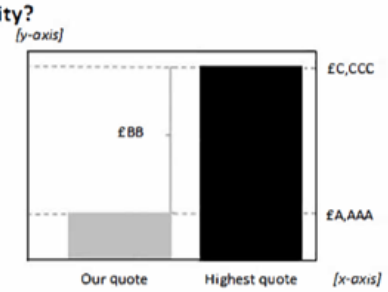
This annuity will provide you with an annual income of:

£A,AAA

Can you get a better income from your annuity?

Based on your key information, there are quotes available from other providers offering higher rates. If you select our product, you would be losing out on £BB per year.

And, if applicable: You are entitled to a [guaranteed annuity rate from your current pension provider][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX. If you select our product, you could be losing out on £DD per year.



The Financial Conduct Authority is a financial services regulator. It requires us to inform you that you can shop around if you want to. If you want to see what other options are available from other providers please visit moneyhelper.org.uk/guaranteed-income or call 0800138 7777.

Company contact details and other key information

Part 4: Template for cases where the market-leading quote offers the lowest purchase price pension annuity

Where the market-leading quote offers the lowest purchase price

Firm Logo

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Annuity features	
Annual income **£XX,XXX**	**No guarantee** period
Paid **quarterly** in advance	Payments **increase** by 2% per year
Dependents income	*[Other key features of annuity]*

If relevant, include key information here such as:

You are entitled to a guaranteed annuity rate from [date/customer's age] paying an [estimated] annual income of £X,XXX [when applied to the total value of your pension pot (£X,XXX)].

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission from your provider.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

Buying this annuity from us will cost you:

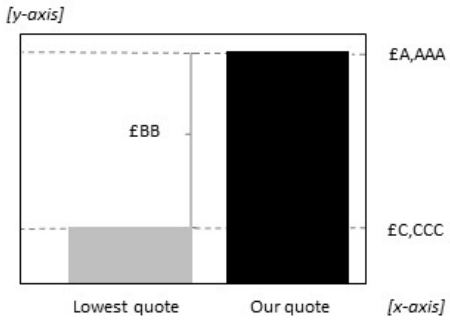
£A,AAA

Can you pay less for your annuity?

Based on your key information, there are quotes available from other providers offering a lower purchase price. If you select our product, you would be **paying £BB too much to purchase your annuity.**

[if applicable] Based on your key information, the lowest quote offers you the lowest purchase price for the requested income of £xx,xxx. However, you are entitled to a guaranteed annuity rate from your current provider paying an [estimated] annual income of £X,XXX on your pension pot of £XX,XXX, offering a better value annuity than the lowest purchase price quote. You also risk losing your entitlement to the guaranteed annuity rate if you proceed with the lowest purchase price quote.

[if applicable] You are entitled to a guaranteed annuity rate from your current pension provider from [date/customer's age] paying an [estimated] annual income of £X,XXX. **[when applied to the total value of your pension pot (£X,XXX)].**



The Financial Conduct Authority is a financial services regulator. It requires us to inform you that you can shop around if you want to. If you want to see what other options are available from other providers please visit moneyadviceservice.org.uk/annuitiesquotes or call 0800 138 7777.

Company contact details and other key information

Part 5: Template for cases where the income quote or the application of a retail client's guaranteed annuity rate offers the lowest purchase price pension annuity

Where the income quote or a guaranteed annuity rate offers the lowest price pension annuity

Firm Logo

keyfacts®

Annuity features	
Annual income **£XX,XXX**	**No guarantee** period
Paid **quarterly** in advance	Payments **increase** by 2% per year
Dependents income	*[Other key features of annuity]*

If relevant, include key information here such as:

You are entitled to a guaranteed annuity rate from [date/customer's age] paying an [estimated] annual income of £X,XXX [when applied to the total value of your pension pot (£X,XXX)].

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

Buying this annuity from us will cost you:

£A,AAA

Can you pay less for your annuity?

Based on your key information, our quote offers you the lowest purchase price.

OR

Based on your key information, our quote offers you the lowest purchase price for the requested income of £xx,xxx. However, you are entitled to a guaranteed annuity rate from your current provider paying an [estimated] annual income of £X,XXX on your pension pot of £XX,XXX, offering a better value annuity than our quote. You also risk losing your entitlement to the guaranteed annuity rate if you proceed with our quote.

OR

Based on your key information, you are entitled to a guaranteed annuity rate from your current provider that would pay the annual income requested of £X,XXX for a [an estimated] purchase price of £XX,XXX. If you select our product you would be **paying £BB too much to purchase your annuity**. You also risk losing your entitlement to the guaranteed annuity rate if you proceed with our quote.

The Financial Conduct Authority is a financial services regulator. It requires us to inform you that you can shop around if you want to. If you want to see what other options are available from other providers please visit moneyadviceservice.org.uk/annuitiesquotes or call 0800 138 7777.

Company contact details and other key information

Part 6: Template for cases where the retail client refuses to answer questions to determine whether the

client is eligible for an enhanced annuity, or does not consent to a market-leading quote being generated

Where the retail client refuses to answer questions to determine whether the client is eligible for an enhanced annuity, or appropriate consent has not been given to allow a firm to generate a market-leading quote

Firm Logo

keyfacts®

Annuity features	
Annual income **£XX,XXX**	**No guarantee** period
Paid **quarterly** in advance	Payments **increase** by 2% per year
Dependants income	*[Other key features of annuity]*

If relevant, include key information here such as:

You are entitled to a guaranteed annuity rate from [date/customer's age] paying an [estimated] annual income of £X,XXX [when applied to the total value of your pension pot (£X,XXX)].

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission from your provider.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

Buying this annuity from us will cost you:

£A,AAA

Can you pay less for your annuity?

You may be able to pay less for an annuity providing £XX,XXX a year by shopping around.

If you want to see what other options are available from other providers please visit moneyadviceservice.org.uk/annuitiesquotes or call 0800 138 7777.

Did you know?

If you've not already been asked questions about your health or lifestyle, answering these could get you even more income.

For example - if you've smoked tobacco, been advised by a medical professional to adjust your lifestyle to improve your health or had a medical condition requiring prescribed medication or hospital treatment - you may be entitled to more income than is quoted above.

Visit moneyadviceservice.org.uk/annuitiesquotes or call 0800 1387777 to find out more.

Company contact details and other key information

Appropriate pension transfer analysis

This annex belongs to ■ COBS 19.1.2BR.

[**Note**: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf]

appropriate pension transfer analysis

R

1 In preparing an *appropriate pension transfer analysis*, a *firm* must:

(1) use rates of return which reflect the investment potential of the assets in which the *retail client's* funds would be invested under the *proposed arrangement*;

(2) where the *proposed arrangement* includes a UK lifetime *pension annuity* that is being purchased on normal terms, use the assumptions in COBS 19 Annex 4C 1R(2) to assess the benefits likely to be paid under the *proposed arrangement*;

(3) use the assumptions in COBS 19 Annex 4C 1R(4) to project the level of income likely to be paid under the *ceding arrangement* at the point of retirement;

(4) take into account:

(a) the impact of the proposed transfer on the tax position of the *retail client*, particularly where there would be a financial impact from crossing a tax threshold or entering a new tax band;

(b) the impact (if any) on the *retail client's* access to state benefits;

(5) have regard to the likely pattern of benefits that might be taken from both the *ceding arrangement*and the *proposed arrangement*;

(6) undertake any comparisons of benefits and options consistently;

(7) plan for a reasonable period beyond average life expectancy particularly where a longer period would better demonstrate the risk of funds not lasting throughout retirement;

(8) consider how each of the arrangements would play a role in:

(a) meeting the *retail client's* income needs throughout retirement (relative to other means available to meet those needs);

(b) the provision of death benefits, where relevant (including by providing comparisons on a fair and consistent basis between the *ceding* and *proposed arrangement* both at present and at various future points in time);

(9) consider the trade-offs that may occur by prioritising differing *client* objectives (e.g. prioritising income needs throughout retirement over the provision of death benefits and vice-versa); and

(10) use more cautious assumptions where appropriate.

G

2 (1) When making assumptions about the rate of return under COBS 19 Annex 4A 1R(1), a *firm* should consider consistency with other assumptions (such as inflation and exchange rates).

(2) COBS 19 Annex 4A 1R(1), 1R(2) and 1R(3) do not prevent a *firm* from preparing the *appropriate pension transfer analysis* on additional assumptions (such as to demonstrate variability of returns) as long as such analyses are not given more prominence than an analysis prepared in accordance with this Annex.

(3) When providing an indication of life expectancy or mortality which is not linked to an annuity, *firms* should use appropriate published population statistics which allow for future cohort mortality improvements, such as those published by the Office for National Statistics.

(4) When the *proposed arrangement* includes a *pension annuity*, the assumptions in COBS 19 Annex 4C 1R(2) may not always be relevant (for example, if the *retail client* is considering a transfer to access an impaired life annuity or an overseas annuity). In such circumstances the *firm* should assess the benefits likely to be paid under the *proposed arrangement* in an alternative way (for example by obtaining quotations).

Charges used for the *appropriate pension transfer analysis*

R

3 An *appropriate pension transfer analysis* must take account of all charges that may be incurred by the *retail client* as a result of a *pension transfer* or *pension conversion* and subsequent access to funds following such a transaction, other than:

(1) *adviser charges* paid by a third party (e.g. an employer); and

(2) *adviser charges* that would be payable whether the *pension transfer* or *pension conversion* happened or not.

G

4 The charges in COBS 19 Annex 4A 3R include, but are not limited to, any of the following:

(1) product charges, including those on any investments within the product;

(2) *platform charges*;

(3) *adviser charges* in relation to the *personal recommendation* and subsequently during the pre-retirement period as well as at benefit crystallisation and beyond, where likely to be relevant; and

(4) any other charges that may be incurred if amounts are subsequently withdrawn.

Cashflow model

R

5 Where a *firm* prepares a cashflow model, it must:

(1) produce the model in real terms in line with the CPI inflation rate in COBS 19 Annex 4C1R (4)(d);

(2) (if the net income is being modelled) ensure that the tax bands and tax limits applied are based on reasonable assumptions;

(3) take into account all relevant tax charges that may apply in both the *ceding arrangement* and the *proposed arrangement*; and

(4) include stress-testing scenarios to enable the *retail client* to assess more than one potential outcome.

Transfer value comparator

This annex belongs to ■ COBS 19.1.3AR.

[**Note**: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf]

Transfer value comparator

R

1 The firm must:

(1) revalue the future income benefits in COBS 19.1.3AR(1) by projecting them to the date they would normally be paid in accordance with the assumptions in COBS 19 Annex 4C 1R(4);

(2) determine the estimated future cost of the *pension annuity* in accordance with the assumptions in COBS 19 Annex 4C 1R(2); and

(3) apply the rate of return and charges in COBS 19 Annex 4C 2R to the amount determined in (2) to determine the estimated value needed at the calculation date.

R

2 [deleted]

G

3 [deleted]

Assumptions

This annex belongs to ■ COBS 19.1.2BR and ■ COBS 19.1.3AR.

[**Note**: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf]

Assumptions

R

1 (1) A *firm* must use the assumptions in (2) when:

(a) the *proposed arrangement* includes a *pension annuity* and COBS 19 Annex 4A 1R(2) applies; or

(b) it determines the estimated cost of future income benefits as a *pension annuity* under COBS 19 Annex 4B 1R(2) or COBS 19 Annex 4B 2R(2).

(2) The assumptions are:

(a) the index-linked annuity interest rate for pension benefits linked to the *RPI* is the average of the previous 3 *months'* intermediate rate of return in COBS 13 Annex 2 3.1R(6) for annuities linked to the *RPI* (using the 6th day of any *month* as the starting point for calculation purposes), but determined as if the annual provision applies on the 15th of each *month*;

(b) the index-linked annuity interest rate for pension benefits linked to the *CPI* is the annuity rate in (a) plus 1.0%;

(c) the annuity interest rate is the average of the previous 3 *months' intermediate rate of return* in COBS 13 Annex 2 3.1R(6) for annuities with a level or fixed rate of increase (using the 6th day of any *month* as the starting point for calculation purposes), but determined as if the annual provision applies on the 15th of each *month*;

(d) the annuity interest rate for post-retirement *limited price indexation* based on the *RPI* with maximum pension increases less than or equal to 3.5%, or with minimum pension increases more than or equal to 3.5%, is the rate in (c) allowing for increases at the maximum or minimum rate of pension increase respectively; otherwise it is the rate in (a);

(e) the annuity interest rate for post-retirement *limited price indexation* based on the *CPI* with maximum pension increases less than or equal to 2.5% or with minimum pension increases more than or equal to 3.0%, is the rate in (c) above allowing for increases at the maximum or minimum rate of pension increase respectively; otherwise it is the rate in (b) above;

(f) the mortality rate used to determine the annuity is based on the year of birth rate derived from each of the Institute and Faculty of Actuaries' Continuous Mortality Investigation tables PMA08 and PFA08 and including mortality improvements derived from each of the male and female annual mortality projections models, in equal parts;

(g) the annuity expense allowance is: 4.0%

(h) the *transfer value comparator* should be calculated on the basis that:

(i)a female member of the scheme has a male spouse or partner who is 3 years older; or

(ii)a male scheme member has a female spouse or partner who is 3 years younger.

(3) A *firm* must use the assumptions in (4) when it:

(a) projects the level of income likely to be paid under the *ceding arrangement* at the point of retirement under COBS 19 Annex 4A 1R(3); or

(b) revalues the future income benefits in COBS 19.1.3AR(1) by projecting them to the date they would normally be paid under COBS 19 Annex 4B 1R(1).

(4) The assumptions are:

(a)	the *RPI* is:	3.0%
(b)	the average earnings index and the rate for section 148 orders is:	3.5%
(c)	for benefits linked to the *RPI*, the pre-retirement *limited price indexation* revaluation is:	3.0%
(d)	for benefits linked to the *CPI*, the pre-retirement *limited price indexation* revaluation is:	2.0%

[**Note:** section 148 orders are orders made by the Secretary of State under section 148 of the Social Security Administration Act 1992. Section 148(7) of this Act provides that orders made previously under section 21 of the Social Security Pensions Act 1975 will be treated as orders made under section 148.]

Rate of return and charges

R

2 (1) This *rule* applies for the purposes of COBS 19 Annex 4B 1R(3).

(2) The rates of return for valuing future income benefits between the date of calculation and the date when the future income benefits would normally come into payment must be based on the fixed coupon yield on the UK FTSE Actuaries Indices for the appropriate term.

(2A) The fixed coupon yields in (2) are derived using the appropriate term from one of the following indices:

(a) up to 5 years;

(b) up to 5-10 years;

(c) up to 10-15 years; or

(d) over 15 years.

(3) The product charges prior to *future income benefits* coming into payment must be assumed to be: 0.4%

(4) The fixed coupon yields in (2) are updated on the 6th day of each month based on the yield that applied on the 15th day of the previous month.

Mortality rate

E

3 (1) This *rule* applies for the purposes of COBS 19 Annex 4C 1R(2)(f).

(2) For any year commencing 6 April, the male and female annual CMI Mortality Projections Models in the series CMI (20YY-2)_M_[1.25%] and CMI (20YY-2)_F_[1.25%], where YY-2 is the year of the Model, should be used.

(3) Contravention of (2) may be relied on as tending to establish contravention of the *rule* referred to in (1).

Format for provision of transfer value comparator

This annex belongs to ■ COBS 19.1.3AR.

[**Note**: The FCA has also issued non-Handbook guidance for firms who advise on pension transfers. See https://www.fca.org.uk/publication/finalised-guidance/fg21-3.pdf]

1

1.1The first page of the *transfer value comparator* must follow the format and wording shown in Table 1, except that alternative colours may be used in the chart and the scale of the charts may be changed (as long as the y-axis starts at £0). Note that the figures in Table 1 are used for illustration only. The second page of the *transfer value comparator* must contain the notes set out in Table 2.

1.2 [deleted]

1.3[deleted]

Table 1

This table belongs to *COBS* 19 Annex 5 1.1R.

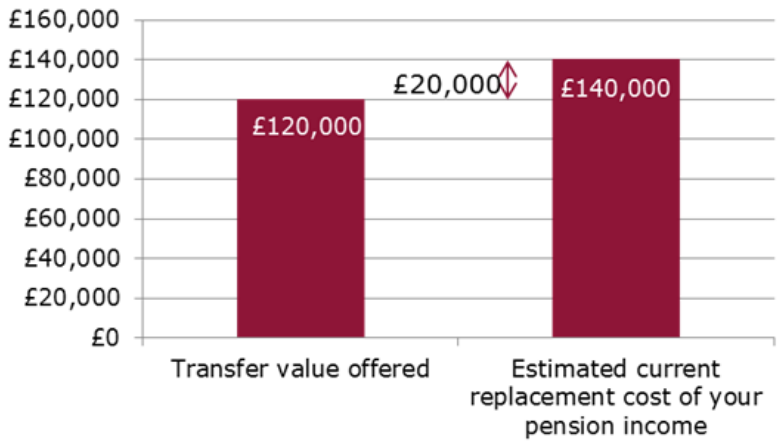
You have been offered a cash equivalent transfer value of £120,000 in exchange for you giving up any future claims to a pension from the scheme.

Will I be better or worse off by transferring?

- We are required by the Financial Conduct Authority to provide an indication of what it might cost to replace your scheme benefits.
- We have done this by looking at the amount you might need to buy the same benefits from an insurer.

It could cost you £140,000 to obtain a comparable level of income from an insurer.

This means the same retirement income could cost you £20,000 more by transferring.



See 'Notes' on the next page for a detailed explanation of this information.

Table 2

This table belongs to *COBS* 19 Annex 5 1.2R.

Notes

1. *The estimated replacement cost of your pension income is based on assumptions about the level of your scheme income at normal retirement age (or the retirement age assumed in the calculation of the transfer value if you have passed the normal retirement age or the earliest age at which you can take unreduced benefits without consent being required) and the cost of replacing that income (including spouse's benefits) for an average healthy person using today's costs.*

2. *The estimated replacement value takes into account risk free investment returns after any product charges that you might be expected to pay.*

3. *No allowance has been made for taxation or adviser charges prior to benefits commencing.*

Table 3 [deleted]

Chapter 20

With-profits

20.1 Application

20.1.1 R This chapter applies to a *firm* carrying on *with-profits business*, except to the extent modified in the following *rules*.

20.1.2 R

(1) The section on the process for *reattribution* (■ COBS 20.2.42 R to ■ COBS 20.2.52 G):

(a) applies to a *firm* that is proposing to make a *reattribution* of its *inherited estate*;

(b) but not if, and to the extent that, it would require the *firm* to breach, or would prevent the *firm* from complying with, an order made by a court of competent jurisdiction.

(2) If a *firm* proposes to seek an order from a court of competent jurisdiction that would allow or require it to act in a way that is contrary to the *rules* on *reattribution* (■ COBS 20.2.42 R to ■ COBS 20.2.52 G) (through, or because of, the exception in (1)(b)), the *firm* must:

(a) tell the *appropriate regulator* that that is what it proposes to do;

(b) seek the order at the earliest opportunity; and

(c) if it wishes to take a step that would be contrary to those *rules* in anticipation of such an order, secure a *waiver* before it does so.

20.1.3 R [deleted]

20.1.3A R

20.1.4 R The following do not apply to a *non-directive friendly society*:

(1) ■ COBS 20.3 (Principles and Practices of Financial Management);

(2) ■ COBS 20.4 (Communications with with-profits policyholders); and

(3) ■ COBS 20.5 (With-profits governance).

20.1.5 R This chapter does not apply to *with-profits business* that consists of effecting or carrying out *Holloway sickness policies*.

20.1A The with-profits fund

'Other liabilities' in the with-profits fund

20.1A.1 R For the purposes of calculating any *with-profits funds surplus* and the *rules* and *guidance* in ■ COBS 20, including ■ COBS 20.1A.5 R, ■ COBS 20.1A.6 R and ■ COBS 20.2.17C R, a *firm* must include the following non-exhaustive list as 'other liabilities':

(1) liabilities arising from its regulatory duty to treat *customers* fairly (where not already included in *technical provisions*); and

(2) the value of any prospective future transfers out of the *with-profits fund* properly attributable to shareholders in accordance with ■ COBS 20.

Sub-funds

20.1A.2 R (1) Where the *firm*:

(a) identifies particular assets as forming a distinct part of its *with-profits fund*; and

(b) restricts participation in the profits or other experience of that distinct part of the fund to a particular category of *with-profits policies*;

then, provided that:

(c) such identification and restriction is consistent with the considerations in (3), and

(d) the *firm* treats each affected category of *with-profits policyholder* fairly, having regard to those considerations;

each such part constitutes a separate *with-profits fund*.

(2) Notwithstanding (1), each different part of its *with-profits fund* constitutes a separate *with-profits fund* if that is necessary in order to treat each affected category of *with-profits policyholder* fairly, having regard to the considerations in (3).

(3) The considerations referred to in (1) and (2) are the terms of the relevant *with-profits policies*; the *firm's* established practice; its *PPFM* and/or other relevant communications to affected *with-profits policyholders*, and the terms of any arrangement formally approved by a court of competent jurisdiction, *appropriate regulator* or *previous regulator*.

20.1A.3 R

(1) For a *Solvency II firm* operating a with-profits fund prior to 1 January 2016:

(a) assets in the with-profits fund held in accordance with *INSPRU* on 31 December 2015 are deemed to be items in a *with-profits fund* for the purposes of ■ COBS 20 from 1 January 2016, provided that any transfers out of, and any outgoings from, the fund up to 31 December 2015 were made in accordance with, and/or do not as at 31 December 2015, constitute, or continue to constitute, a breach of ■ INSPRU 1.5.21 R and ■ INSPRU 1.5.27 R;

(b) any assets transferred out of the fund in breach of ■ INSPRU 1.5.21 R and ■ INSPRU 1.5.27 R are deemed not to have been transferred out of the fund and remain part of the *with-profits fund*;

(c) to the extent that the assets in (b) have also been transferred out of the *firm* then, before (a) can apply to the *firm*, the *firm* must transfer into the *with-profits fund* assets equal to the value of the assets referred to in (b), and of a similar quality, having regard to the PRA Rulebook: Solvency II Firms: Investments.

(2) *Firms* to which (1)(a) applies must, in any event, comply with ■ COBS 20.1A.2 R. Paragraph (1)(a) does not apply to the extent that it would be inconsistent with the operation of ■ COBS 20.1A.2 R where the effect is to require a *firm* to create or make changes to sub-funds amounting to separate *with-profits funds*.

Governance arrangements for the with-profits fund

20.1A.4 R

A *Solvency II firm* effecting or carrying out *with-profits insurance business* must identify the assets relating to all the business written in, or transferred into, each *with-profits fund* which it is required to hold under ■ COBS 20.1A.5 R or PRA Rulebook: Solvency II firms: With Profits rule 2.1.

20.1A.5 R

A *Solvency II firm* must ensure that it holds assets in each of its *with-profits funds* of a value at least sufficient to cover the "with-profits policy liabilities" defined in the PRA Rulebook: Glossary and as required by PRA Rulebook: Solvency II firms: With Profits rule 2.1, and any other liabilities in respect of all of the business written in, or transferred into, that *with-profits fund*.

20.1A.6 R

A *Solvency II firm* must maintain separate accounting records for each of its *with-profits funds*. The accounting records must identify:

(1) all of the assets of that *with-profits fund*;

(2) the best estimate component of *technical provisions* for the *with-profits policies* written in, or transferred into, that *with-profits fund*;

(3) the best estimate component of *technical provisions* for the *non-profit insurance contracts* written in, or transferred into, that *with-profits fund*;

(4) any other liabilities of the *with-profits fund* not covered by (2) or (3), and their value calculated in accordance with PRA Rulebook: Solvency II Firms: Valuation and applicable parts of the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014.

20.1A.7 G A *Solvency II firm* must ensure that the assets in its *with-profits funds* are separately identified and allocated to the relevant *with-profits fund* at all times. Assets in external accounts (e.g. with banks, custodians, or brokers) should be segregated in the *firm's* books and records into separate accounts for *with-profits insurance business* and other business. Where a *firm* has more than one *with-profits fund*, separate accounting records must be maintained for each fund. Accounting records should clearly document the allocation.

20.1A.8 R A *Solvency II firm* must not transfer assets out of a *with-profits fund* unless:

(1) the assets represent any part of a *with-profits fund surplus*, or represent assets held in accordance with ■ COBS 20.1A.5 R in relation to the part of a distribution that has been made which is properly attributable to shareholders, in accordance with ■ COBS 20; and

(2) no more than three months have passed since the *actuarial investigation* determining that surplus.

20.1A.9 G For the purposes of ■ COBS 20.1A.8 R, an *actuarial investigation* is required to determine any *with-profits fund surplus* for the requirements in ■ COBS 20 and remains in-date for three months from the date when the determination of the surplus was made. However, even where the investigation is still in-date, the *firm* should not make the transfer unless there is sufficient surplus at the time of the transfer to cover the value of the assets being transferred. The *actuarial investigation* carried out may rely, in part, on any relevant and sufficiently up-to-date valuation exercise carried out for the purposes of calculating *technical provisions* under the PRA Rulebook: Solvency II Firms: Technical Provisions and applicable parts of the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014, provided that the person carrying out the *actuarial investigation* considers it appropriate to do so.

20.1A.10 R

(1) A *Solvency II firm* must use or apply an asset in a *with-profits fund* only for the purpose of the business in the *with-profits fund*.

(2) For the purpose of (1), applying or using an asset includes any obligation (even if only contingent) to apply or use that asset.

20.1A.11 R A *Solvency II firm* must not agree to, or allow, any mortgage or charge on the assets in any of its *with-profits funds*, other than in respect of, and for the purposes of, the business in the *with-profits fund*.

20.1A.12 G References in ■ COBS 20.1A.10 R and ■ COBS 20.1A.11 R to 'the purposes of the business' in the *with-profits fund* include the payment of claims, expenses and liabilities arising from that business, the acquisition of lawful access to fixed assets to be used in that business and the investment of assets. The payment of liabilities may include repaying a loan but only where that loan was incurred for the purpose of the business written into the *with-profits fund*. The purchase or investment of assets may include an exchange at fair market value of assets (including cash) between the *with-profits fund* and other assets of the *firm*. A *Solvency II firm* may also lend securities held in a *with-profits fund* under a stock lending transaction, or transfer assets as collateral for a stock lending transaction, where the *firm* is the borrower and where such lending or transfer is for the benefit of the business written into the *with-profits fund*.

20

Management of the with-profits fund

20.1A.13 R

A *firm*, other than a *non-directive friendly society*, which is subject to contractual terms providing for payments under a capital instrument included in that *insurer's* own funds, must:

(1) manage any *with-profits fund* so that discretionary benefits under a *with-profits policy* are calculated and paid, disregarding, insofar as is necessary for its *customers* to be treated fairly, any requirements in such contractual terms whether or not they are absolute, contingent or at the discretion of the *firm*; and

(2) disclose its intention to manage the *with-profits fund* on the basis set out in (1) in the *firm's PPFM*.

20.1A.14 G

(1) A *firm*, other than a *non-directive friendly society*, is expected to manage its *with-profits fund* so that amounts (whether interest, principal, or other outgoings) payable by the *firm* under a capital instrument included in that *insurer's* own funds (as determined in accordance with the PRA Rulebook: Solvency II Firms: Own Funds or Non-Solvency II firms: Insurance Company – Capital Resources) do not impact on the *with-profits fund's* assets or on the *firm's* ability to declare and pay under a *with-profits policy* discretionary benefits that are consistent with the *firm's* obligations under *Principle* 6 (Customers' interests).

(2) A *firm*, other than a *mutual*, should not regard any asset held in the *with-profits fund* as necessarily available to cover payments or other obligations arising under a subordinated loan.

20.1A.15 R

A *Solvency II firm* must ensure that it has adequate arrangements in place for ensuring that transactions affecting the assets of the *firm* operate fairly between *with-profits policyholders* and other persons interested in the other assets of the *insurer* and, where the *firm* has more than one *with-profits fund*, those transactions operate fairly between the *with-profits policyholders* in each of those funds.

20.2 Treating with-profits policyholders fairly

Introduction

20.2.1 G

(1) *With-profits business*, by virtue of its nature and the extent of discretion applied by *firms* in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of *policyholders*. Potential conflicts of interest may arise between shareholders and *with-profits policyholders*, between *with-profits policyholders* and non-profit *policyholders* within the same fund, between *with-profits policyholders* and the members of mutually-owned *firms*, between *with-profits policyholders* and management, and between different classes of with-profits policyholders, for example those with and without guarantees. The *rules* in this section address specific situations where the risk may be particularly acute.

(2) *With-profits policyholders* have an interest in the whole and in every part of the *with-profits fund* into which their *policies* are written and from which the amounts payable in connection with their *policies* are to be paid. Those amounts include those required to satisfy their contractual rights and such other amounts as the *firm* is required to pay in order to treat them fairly (including but not limited to the amounts required to satisfy their reasonable expectations).

(3) The fair treatment of *with-profits policyholders* requires the *firm's* pay-outs on individual *with-profits policies* to be fair (see ■ COBS 20.2.3 R et seq.) and, if the *firm* makes a distribution from the *with-profits fund* into which their *policies* are written, the receipt by the *with-profits policyholders* of at least the *required percentage* (see ■ COBS 20.2.17 R).

20.2.1A R

A *firm* must take reasonable care to ensure that all aspects of its operating practice are fair to the interests of its *with-profits policyholders* and do not lead to an undisclosed, or otherwise unfair, benefit to shareholders or to other *persons* with an interest in the *with-profits fund*.

20.2.1B G

(1) Notwithstanding that there may not be a *rule* in the remainder of this section addressing a particular aspect of a *firm's* operating practices, *firms* will need to ensure that they take reasonable care to ensure that all aspects of their operating practice comply with ■ COBS 20.2.1A R.

(2) For the avoidance of doubt ■ COBS 20.2.1A R does not exhaust or restrict the scope of *Principle* 6. *Firms* will in any event need to ensure that their operating practices are consistent with *Principle* 6.

20.2.1C G When considering the provisions in this chapter a *firm* will need to ensure that, if applicable, it complies with the with-profits governance requirements in ■ COBS 20.5.

20.2.1D G For the purposes of ■ COBS 20.2.1A R the *FCA* expects a *firm* to be able to demonstrate that it has taken reasonable care to ensure its operating practices are fair, including being able to produce appropriate evidence to show that it has followed relevant governance procedures.

20.2.2 R Neither *Principle* 6 (Customers' interests) nor the *rules* on treating *with-profits policyholders* fairly (■ COBS 20.2) relieve a *firm* of its obligation to deliver each *policyholder's* contractual entitlement.

Amounts payable under with-profits policies

20.2.3 R A *firm* must have good reason to believe that its pay-outs on individual *with-profits policies* are fair.

Amounts payable under with-profits policies: Maturity payments

20.2.4 G In this section, maturity payments include payments made when a *with-profits policy* provides for a minimum guaranteed amount to be paid.

20.2.5 R

(1) Unless a *firm* cannot reasonably compare a maturity payment with a calculated asset share, it must:

(a) set a target range for the maturity payments that it will make on:

(i) all of its *with-profits policies*; or

(ii) each group of its *with-profits policies*;

(b) ensure that each target range:

(i) is expressed as a percentage of unsmoothed asset share; and

(ii) includes 100% of unsmoothed asset share; and

(c) manage its *with-profits business*, and the business of each *with-profit fund*, with the aim of making on each *with-profit policy* a maturity payment that falls within the relevant target range.

(2) Unsmoothed asset share means:

(a) the unsmoothed asset share of the relevant *with-profits policy*; or

(b) an estimate of the unsmoothed asset share of the relevant *with-profits policy* derived from the unsmoothed asset share of one or more specimen *with-profits policies*, which a *firm* has selected to represent a group, or all, of the *with-profits policies* effected in the same *with-profits fund*.

(3) A *firm* must calculate unsmoothed asset share by:

(a) (i) for a *firm* which is not a *Solvency II firm*, applying the methods in ■ INSPRU 1.3.119 R to ■ INSPRU 1.3.123 R;

(ii) for a *firm* which is a *Solvency II firm*, applying the methods in PRA Rulebook: Solvency II Firms Valuation, Technical

Provisions and Surplus Funds and applicable parts of the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014;

(b) including any amounts that have been added to the *policy* as the result of a distribution from an *inherited estate*; and

(c) subject to (d), and where the terms of the *policy* so provide, adding or subtracting an amount that reflects the experience of the *insurance business* in the relevant *with-profits fund*; but

(d) if a *with-profits fund* has suffered adverse experience, which results from a *firm's* failure to comply with the *rules* and *guidance* on treating *with-profits policyholders* fairly (■ COBS 20.2.1 G to ■ COBS 20.2.41 G and ■ COBS 20.2.53 R to ■ COBS 20.2.60 G), that adverse experience may only be taken into account if, and to the extent that, in the reasonable opinion of the *firm's governing body*, the amount referred to in (c) cannot be met from:

(i) the *firm's inherited estate* (if any); or

(ii) any assets attributable to shareholders, whether or not they are held in the relevant *with-profits fund*.

20.2.6 R Notwithstanding that a *firm* must aim to make maturity payments that fall within the relevant target range, a *firm* may make a maturity payment that falls outside the target range if it has a good reason to believe that at least 90% of maturity payments on *with-profits policies* in that group have fallen, or will fall, within the relevant target range.

20.2.7 G If it is not fair or reasonable to calculate or assess a maturity payment using the *prescribed asset share methodology*, a *firm* may use another methodology to set bonus rates, if that methodology properly reflects its representations to *with-profits policyholders* and it applies that methodology consistently.

20.2.8 R A *firm* may make deductions from asset share to meet the cost of guarantees, or the cost of capital, only under a plan approved by its *governing body* and described in its *PPFM*. A *firm* must ensure that any deductions are proportionate to the costs they are intended to offset.

20.2.9 R If a *firm* has approved a plan to make deductions from asset share, it must ensure that its planned deductions do not change unless justified by changes in the business or economic environment, or changes in the nature of the *firm's* liabilities as a result of *policyholders* exercising options in their *policies*.

20.2.10 R If a *firm* calculates maturity payments using the *prescribed asset share methodology*, it must manage its *with-profits business*, and each *with-profits fund*, with the longer term aim that it will make aggregate maturity payments of 100% of unsmoothed asset share.

Amounts payable under with-profits policies: Surrender payments

20.2.11 G A *firm* may use its own methodology to calculate surrender payments, but it should have good reason to believe that its methodology produces a result

which, in aggregate across all similar policies, is not less than the result of the *prescribed asset share methodology*. A *firm* might, for example, test the surrender payments on a suitable range of specimen *with-profits policies*.

20.2.12 R If a *firm* calculates surrender payments using the *prescribed asset share methodology*, it must first calculate what the surrender payment would be if it was a maturity payment calculated by that methodology.

20.2.13 R A *firm* may then make a deduction from unsmoothed asset share if necessary, in the reasonable opinion of the *firm's governing body*, to protect the interests of the *firm's* remaining *with-profits policyholders*.

20.2.14 G Amounts that might be deducted include:

(1) the *firm's* unrecovered costs, including any financing costs incurred in effecting or carrying out the surrendered *with-profits policy* to the date of surrender, including the costs that might have been recovered if the *policy* had remained in force;

(2) costs that would fall on the *with-profits fund*, if the surrender value is calculated by reference to an assumed *market value* of assets which exceeds the true *market value* of those assets;

(3) the *firm's* costs incurred in administering the surrender; and

(4) a fair contribution towards the cost of any contractual benefits due on the whole, or an appropriate part, of the continuing policies in the *with-profits fund* which would otherwise result in higher costs falling on the continuing *with-profits policies*.

20.2.15 G The provisions dealing with the calculation of surrender payments (■ COBS 20.2.11 G to ■ COBS 20.2.12 R) do not prevent a *firm* from setting a target range for surrender payments where the top-end of the range is lower than the top-end of the relevant range for maturity payments.

20.2.16 R A *firm* must not, in so far as is reasonably practicable, make a market value reduction to the face value of the units of an accumulating *with-profits policy* unless:

(1) the *market value* of the *with-profits assets* in the relevant *with-profits fund* is, or is expected to be, less than the assumed value of the assets on which the face value of the units of the *policy* has been based; and

(2) the market value reduction is no greater than is necessary to reflect the impact of the difference in value referred to in (1) on the relevant payment out to the *policyholder*.

20.2.16A G If a *firm* is able to satisfy ■ COBS 20.2.16R (1), then the volume of surrenders, transfers, or other exits from the *with-profits fund* that there has been, or is expected to be, is a factor that a *firm* may take into account when it is considering whether to make a market value reduction, and if so, its amount, subject to the limit in ■ COBS 20.2.16R (2).

Conditions relevant to distributions

20.2.16B G References to distributions in ■ COBS 20 includes distributions of distributable profits arising, namely any permanent addition to *policy* benefits made at the *firm's* discretion based on the investment or other experience in the fund or more generally. Distributions include those relating to expected payments for which allowance has been made in the *technical provisions* or to a *firm's* other liabilities arising from its regulatory duty to treat *customers* fairly, and not just distributions of any *with-profits fund surplus*.

20.2.16C G Examples of distributions include any payment of a cash bonus (including a final bonus on exit or a reduction in *premium*), or a declaration of a reversionary bonus in the form of a permanent addition to the benefits guaranteed to be payable at death or on maturity. In ■ COBS 20.2.21 R and ■ COBS 20.2.22 E (distributions from excess surplus) distributions also include any other amounts that are added to asset shares or to any other measure that is used to determine pay-outs under *policies*.

20.2.17 R A firm must ensure that the amount distributed to *policyholders* from a *with-profits fund*, taking into account any adjustments required by ■ COBS 20.2.17A R, is not less than the *required percentage* of the total amount distributed.

20.2.17A R

(1) Where a *firm* adjusts the amounts distributed to *policyholders*, either by market value reduction or otherwise, in a way that would result in a distribution to *policyholders* of less than the *required percentage*, taking both the relevant distributions and the adjustment into account, then the *firm* must apply a proportionate adjustment to amounts distributed to shareholders so that the distribution to *policyholders* will not be less than the *required percentage*.

(2) The adjustments referred to in (1) include but are not limited to a situation where such an adjustment has the effect of retrospectively reducing past *policyholder* distributions.

20.2.17B G An example of the application of ■ COBS 20.2.17A R, without limitation to its scope generally, is where a *firm* reduces, for any reason, the amounts of a bonus or of bonus units added to *policies* in force. The *firm* should treat this as effectively a 'negative distribution', calculated by making the same assumptions regarding discount rates and other relevant factors as would be used for positive bonus additions. The amount so calculated should then be taken into account in ensuring that the amount distributed to *policyholders* from a *with-profits fund* is not less than the *required percentage* for the purposes of ■ COBS 20.2.17 R.

20.2.17C R A *firm* must not make a distribution from a *with-profits fund*, unless:

(1) if it is not a *Solvency II firm*, the whole of the cost of that distribution can be met without eliminating the *regulatory surplus* in that *with-profits fund*; and

(2) if it is a *Solvency II firm*:

(a) the whole of the cost of that distribution can be met without eliminating the *with-profits fund surplus* in that *with-profits fund*; and

(b) following any distribution that is made to meet a liability for which allowance has been made in *technical provisions* or other liabilities the *firm* is able to demonstrate that it reasonably expects to be able to continue to comply with the requirements in ■ COBS 20.1A.5 R (Governance arrangements for the with-profits fund).

20.2.18 R A *firm* which is not a *Solvency II firm* must not make a distribution from a *with-profits fund* to any *person* who is not a *with-profits policyholder*, unless the whole of the cost of that distribution (including the cost of any obligations that will or may arise from the decision to make a distribution) can be met from the excess, if any, of the assets over the liabilities in that *with-profits fund*.

20.2.19 R A distribution to a *person* who is not a *with-profits policyholder* includes a transfer of assets out of a *with-profits fund* that is not made to satisfy a liability of that fund.

Notification and other requirements in relation to certain distributions

20.2.19A R If a *firm* which is a *Solvency II firm* proposes to make a distribution from a *with-profits fund* to any *person* who is not a *with-profits policyholder*, where:

(1) the distribution to *with-profits policyholders* is smaller than the 'pre-notification to *policyholder* minimum' calculated in accordance with ■ COBS 20.2.19BR (1) then the *firm* must:

(a) provide the *FCA* with written details of the proposed distribution at least two months prior to the proposed distribution, together with copies of draft notifications it proposes to send to *with-profits policyholders* to satisfy (b); and

(b) give affected *with-profits policyholders* in the fund at least one months prior written notice stating:

(i) that it proposes to make no distribution to them; or

(ii) that it proposes to make a distribution of an amount which is smaller than the 'pre-notification to *policyholder* minimum', and setting out the amount and how the distribution is calculated; and

the reasons for (i) or (ii) as relevant; or

(2) the distribution to *with-profits policyholders* does not meet the test in (1) but is smaller than the 'after the event notification to *policyholder* minimum' calculated in accordance with ■ COBS 20.2.19BR (2) then the firm must:

(a) provide the *FCA* with written details of the proposed distribution at least one month prior to the proposed distribution together with copies of draft notifications it proposes to send to *with-profits policyholders* to satisfy (b); and

(b) give affected *with-profits policyholders* in the fund, notice of the distribution within a reasonable period from the date of the distribution, setting out the amount of the distribution, how it was calculated and the reasons for the change compared to the last previous distribution.

20.2.19B R

(1) The 'pre-notification to *policyholder* minimum' referred to in ■ COBS 20.2.19A R is as follows:

$$\frac{b \times c}{a} - \frac{c}{50}$$

where

a is the total amount available for with-profits distribution in the *with-profits fund* in question at the time of the most recent previous distribution;

b is the amount of the most recent previous distribution to *with-profits policyholders*; and

c is the total amount available for with-profits distribution in relation to the proposed distribution.

(2) The 'after the event notification to *policyholder* minimum' referred to in ■ COBS 20.2.19A R is as follows:

$$\frac{b \times c}{a} - \frac{c}{200}$$

where *a*, *b* and *c* have the same meaning as in (1).

(3) The calculations in (1) and (2) must be determined by *actuarial investigation*.

20.2.19C G

(1) If the circumstances in ■ COBS 20.2.19AR (1) or ■ (2) arise, the *firm* should also consider whether any reduction(s) in the proposed distribution and any previous distributions to *with-profits policyholders* over a period of at least the last five years are consistent with treating *with-profits policyholders* fairly and any other obligations of the *firm* under ■ COBS 20.

(2) When calculating the amounts distributed in ■ COBS 20.2.19A R and ■ COBS 20.2.19B R:

(a) any amount allocated to *with-profits policyholders* in anticipation of a distribution is treated as included in the next distribution;

(b) the amount of any available distributable profits is treated as reduced by any part of it which the *firm* has decided to carry forward unappropriated; and

(c) risk margin associated with *technical provisions* should be excluded.

(3) A *firm* which is not a *Solvency II firm* is required to comply with *IPRU(INS)* 3.3.

20.2.20 R

If, on a distribution, a *firm* incurs a tax liability on a transfer to shareholders, it must not attribute that tax liability to a *with-profits fund*, unless:

(1) the *firm* can show that attributing the tax liability to that *with-profits fund* is consistent with its established practice;

(2) that established practice is explained in the *firm's PPFM*; and

(3) that liability is not charged to asset shares.

Requirement relating to distribution of an excess surplus

20.2.21 R At least once a year (or, in the case of a *non-directive friendly society*, at least once in every three years) and whenever a *firm* is seeking to make a *reattribution* of its *inherited estate*, a *firm's governing body* must determine whether the *firm's with-profits fund*, or any of the *firm's with-profits fund*, has an *excess surplus*.

20.2.22 E

(1) If a *with-profits fund* has an *excess surplus*, and to retain that surplus would be a breach of *Principle* 6 (Customers' interests), the *firm* should make a distribution from that *with-profits fund*.

(2) Compliance with (1) may be relied on as tending to establish compliance with *Principle* 6 (Customers' interests).

(3) Contravention of (1) may be relied on as tending to establish a contravention of *Principle* 6 (Customers' interests).

Charges to a with-profits fund

20.2.23 R A *firm* must only charge costs to a *with-profits fund* which have been, or will be, incurred in operating the *with-profits fund*. This may include a fair proportion of overheads.

20.2.24 R Subject to ■ COBS 20.2.25 R, ■ COBS 20.2.25A R and ■ COBS 20.2.25B R, a *firm* must not pay compensation or redress from a *with-profits fund*.

20.2.25 R A proprietary *firm* may pay compensation or redress due to a *policyholder*, or former *policyholder*, from assets attributable to shareholders, whether or not they are held within a *long-term insurance fund* or *with-profits fund*, as relevant.

20.2.25A R A *mutual* may pay compensation or redress due to a *policyholder*, or *former policyholder*, from a *with-profits fund*, but may only pay from assets that would otherwise be attributable to asset shares if, in the reasonable opinion of the *firm's governing body*, the compensation or redress cannot be paid from any other assets in the *with-profits fund*.

20.2.25B R A payment or transfer of liabilities made to correct an error and which has the effect of restoring a *policyholder*, or former *policyholder*, and the *with-profits fund* to the position they would have been in if the error had not occurred (a "rectification payment"), is not a payment of compensation or redress for the purposes of ■ COBS 20.2.24 R.

20.2.25C G Rectification payments may include, for example, a payment to a *policyholder* or former *policyholder* to correct an erroneous underpayment of policy proceeds, or a reimbursement of premiums overpaid. The effect of ■ COBS 20.2.25B R is that a *firm* may make rectification payments using assets in a *with-profits fund*.

20.2.25D G ■ COBS TP 2.14 R has the effect that payments of compensation and redress arising out of events which took place before 31 July 2009 are subject to ■ COBS 20.2.23 R to ■ COBS 20.2.25 R as in force at 30 July 2009.

20.2.26 R A proprietary *firm* must not charge to a *with-profits fund* any amounts paid or payable to a skilled person in connection with a report under section 166 of the *Act* (Reports by skilled persons) if the report indicates that the *firm* has, or may have, materially failed to satisfy its obligations under the *regulatory system*.

20.2.26A R A proprietary *firm* must not charge to a *with-profits fund* any financial penalty imposed on the *firm* by the *appropriate regulator*.

Tax charge to a with-profits fund

20.2.27 R A *firm* must not charge a contribution to corporation tax to a *with-profits fund*, if that contribution exceeds the notional corporation tax liability that would be charged to that *with-profits fund* if it were assessed to tax as a separate *body corporate*.

New business

20.2.28 R A *firm* must not effect new *contracts of insurance* in an existing *with-profits fund* unless:

(1) the *firm's governing body* is satisfied, so far as it reasonably can be, and can demonstrate, having regard to the analysis in (2), that the terms on which each type of contract is to be effected are likely to have no adverse effect on the interests of the *with-profits policyholders* whose *policies* are written into that fund; and

(2) the *firm* has:

(a) carried out or obtained appropriate analysis, based on relevant evidence and proportionate to the risks involved, as to the likely impact on *with-profits policyholders*, having regard to relevant factors including:

(i) the volumes of each type of contract that the *firm* expects to be effected; and

(ii) the periods over which the contracts are expected to remain in force; and

(b) provided the analysis referred to in (a) to its *with-profits committee* or, if applicable, its *with-profits advisory arrangement* and to its *governing body* for the purposes of (1).

20.2.28A G (1) Writing new *insurance business* into a *with-profits fund* is not, of itself, automatically adverse to the interests of *with-profits policyholders*. For example, new *insurance business* which defers the emergence or distribution of surplus to a limited extent for a number of *policyholders*, or which leads to a marginal change in the equity backing ratio, may, subject to satisfying the guidance in ■ COBS 20.2.60 G and ■ COBS 20.2.29 G, reasonably be considered not to have an adverse effect on the *with-profits policyholders* in a *with-profits fund*, if the *firm's governing body* is satisfied (and can demonstrate based on appropriate analysis) that each new line of *insurance business* is likely to be financially self-supporting over the periods during which the contracts are expected to remain in force and is likely to add sufficient value to the *with-profits fund* to offset the cost of acquiring the business.

(2) Conversely, if the particular line of new *insurance business* is priced on loss-making terms or the terms are such that the new *insurance business* is not likely to generate sufficient value after covering all the costs associated with it (in either case when considered in aggregate over the periods over which the contracts are expected to remain in force), then in the *FCA's* view, the terms of that *insurance business* are likely to have an adverse impact on *with-profits policyholders* interests in the relevant fund.

(3) *Firms* will need to ensure that they comply with ■ COBS 20.2.28 R at all times, but in practice *firms* will be expected to pay particular attention when they are designing and pricing or re-pricing products, when they are preparing their financial plans that take into account their expected costs and levels of new business, and, in particular, when reviewing their financial performance, if that reveals that costs or levels of new business have varied significantly from those expected previously.

(4) New business for the purposes of ■ COBS 20.2.28 R will not, in general, include increments on existing *policies* or business written as a result of the exercise of options by an existing *policyholder*.

20.2.29 G In some circumstances, it may be difficult or impossible for a *firm* to mitigate the risk of an adverse effect on its existing, or new, *with-profits policyholders*, unless it establishes a new bonus series or *with-profits fund*. Circumstances that might cause a *firm* to establish a new bonus series or *with-profits fund* include:

(1) where the *firm* has a high level of guarantees or options in its existing *with-profits policies*, which might place an excessive burden on new *with-profits policies*, or vice versa; and

(2) where the potential risks are likely to be so great that a single *with-profits fund* cannot provide adequately for the interests of new and existing *policyholders*, even after allowing for any beneficial effects of diversification. Such potential risks are likely to arise from significant differences in the terms and conditions of the new and existing *with-profits policies*, including the basis on which charges are levied and reviewed.

20.2.30 G (1) When a *firm* prices the new *insurance business* that it proposes to effect in an existing *with-profits fund*, it should estimate the volume of new *insurance business* that it is likely to effect and then build in adequate margins that will allow it to recover any acquisition costs to be charged to the *with-profits fund*.

(2) ■ COBS 20.2.28 R requires *firms* to obtain appropriate analysis and evidence and this should include at least a profitability analysis on a marginal cost basis.

20.2.31 G When a *firm* sets a target volume for new *insurance business* in an existing *with-profits fund*, it should pay particular attention to the risk of disadvantage to existing *with-profits policyholders*. Those *policyholders* might be disadvantaged, for example, by the need to retain additional capital to support a rapid growth in new business, when that capital might have been distributed in the ordinary course of the *firm's* existing business.

Relationship of a with-profits fund with the firm and any connected persons

20.2.32 R Unless ■ COBS 20.2.32A R applies, a *firm* carrying on *with-profits business* must not:

(1) make a loan to a *connected person* using assets in a *with-profits fund*; or

(2) give a guarantee to, or for the benefit of, a *connected person*, where the guarantee will be backed using assets in a *with-profits fund*;

unless that loan or guarantee:

(3) will be on commercial terms;

(4) will, in the reasonable opinion of the *firm's* senior management, be beneficial to the *with-profits policyholders* in the relevant *with-profits fund*; and

(5) will not, in the reasonable opinion of the *firm's* senior management, expose those *policyholders* to undue *credit* or *group* risk.

20.2.32A R ■ COBS 20.2.32R (1) does not apply to a *Solvency II firm*.

20.2.32B G Loans to a *connected person* using assets in a *with-profits fund* should be considered as investments of assets within the *with-profits fund*. As such, a *Solvency II firm* will need to ensure that:

(1) such loans comply with the PRA Rulebook: Solvency II Firms: Investments having regard to ■ COBS 20.2.35B G; and

(2) where there is a conflict of interests, in the reasonable opinion of the *firm's* senior management, they are in the best interests of the *with-profits policyholders* in the relevant *with-profits fund*.

Contingent loans and other forms of support for the with-profits fund

20.2.33 G

(1) If a *firm*, or a *connected person*, provides support to a *with-profits fund* (for example, by a contingent loan), no reliance should be placed on that support when the *firm* assesses the *with-profits fund's* financial position unless there are clear and unambiguous criteria governing any repayment obligations to the support provider.

(2) The degree of reliance placed on that support should depend on the subordination of the support to the fair treatment of *with-profits policyholders* and clarification of what fair treatment means in various circumstances. For a *realistic basis life firm* this would normally be evidenced by the liability for such support being capable, under stress, of a progressively lower valuation in the *future policy-related liabilities*.

20.2.34 G Where assets from outside a *with-profits fund* are made available to support that fund (and there is no ambiguity in the criteria governing any repayment obligations to the support provider), a *firm* should manage the fund

disregarding the liability to repay those assets, at least in so far as that is necessary for its *policyholders* to be treated fairly.

Support arrangements

20.2.34A R

(1) A *Solvency II firm* must ensure that, in relation to any arrangements where assets outside a *with-profits fund* provide or may provide support to it, both the following requirements are met:

(a) the precise terms and conditions on which those support asset arrangements operate and assets may become available, including whether and when they are repayable:

(i) are adequately documented in the *firm's* records; and

(ii) if the *firm* is required to produce a *PPFM*, are set out clearly and unambiguously in its *PPFM*.

(b) the operation of those support asset arrangements is consistent with terms and conditions in communications to *with-profits policyholders*, including any *PPFM*.

Other rules and guidance on the conduct of with-profits business

20.2.35 G

When a *firm*, other than a *Solvency II firm*, determines its investment strategy, and the acceptable level of risk within that strategy, it should take into account:

(1) the extent of the guarantee in its *with-profits policies*;

(2) any representation that it has made to its *with-profits policyholders*;

(3) its established practice; and

(4) the amount of capital support available.

20.2.35A G

20.2.35B G

(1) A *Solvency II firm* is required to consider its investment strategy in relation to the assets in a *with-profits fund*, including any *strategic investments*, in accordance with the PRA Rulebook: Solvency II Firms: Investments. *Firms* are expected, in applying the PRA Rulebook: Solvency II Firms: Investments, to take into account the particular circumstances and requirements of the liabilities in the *with-profits fund* to which those assets relate. For example, a *Solvency II firm* will need to consider:

(a) whether a *strategic investment* meets the criteria in the PRA Rulebook: Solvency II Firms: Investments; and

(b) that the investment will ensure the quality, security, liquidity of the portfolio of assets of the *firm* as a whole and that the investment(s) are localised to ensure their availability.

(2) Where there is a conflict of interest (e.g. between the *with-profits policyholders* and the *firm*) the *firm* must ensure that the *strategic investment* is made in the best interests of *policyholders*. It is expected that a *Solvency II firm* applying the provisions in PRA

Rulebook Solvency II Firms Investments in this manner will lead to *with-profits policyholders* being treated no less fairly than if the *firm* was not a *Solvency II firm* and was subject to ■ COBS 20.2.35 G and ■ COBS 20.2.36 R.

20.2.36 R A *firm*, other than a *Solvency II firm*, must not:

(1) use *with-profits assets* to finance the purchase of a *strategic investment*, directly or by or through a *connected person*; or

(2) retain an investment referred to in (1);

unless its *governing body* is satisfied, so far as it reasonably can be, and can demonstrate, that the purchase or retention is likely to have no adverse effect on the interests of its *with-profits policyholders* whose *policies* are written into the relevant fund.

20.2.36A R A *firm* must keep adequate records setting out the strategic purpose for which a *strategic investment* has been purchased or retained.

20.2.36B G

(1) In order for a *firm* to comply with ■ COBS 20.2.36 R, a *firm's governing body* should consider:

(a) the size of the investment in relation to the *with-profits fund*;

(b) the expected rate of return on the investment;

(c) the risks associated with the investment, including, but not limited to, liquidity risk, the capital needs of the acquired business or investment and the difficulty of establishing fair value (if any);

(d) any costs that would result from divestment;

(e) whether the *with-profits actuary* would regard the investment as having no adverse effect on the interests of *with-profits policyholders* as a class;

(f) in the case of a proprietary *firm*, whether it would be more appropriate for the investment to be made using assets other than those in the *with-profits fund*; and

(g) any other relevant material factors.

(2) A *firm* should consider whether making or retaining a *strategic investment* should be disclosed to *with-profits policyholders*.

(3) Examples of *strategic investments* include, but are not limited to, a significant investment in another business or significant real estate assets used within the business of the *firm*.

20.2.37 G If a *firm* carries out *non-profit insurance business* in a *with-profits fund*, it should review the profitability of the *non-profit insurance business* regularly.

20.2.38 G If a *firm* has reinsured its *with-profits insurance business* into another *insurance undertaking*, it should take reasonable steps to discharge its responsibilities to its *with-profits policyholders*, in respect of the reinsured business. Those steps should include maintaining adequate controls.

Significant changes in with-profits funds

20.2.39 R A *firm* must not enter into a material transaction relating to a *with-profits fund* unless, in the reasonable opinion of the *firm's governing body*, the transaction is unlikely to have a material adverse effect on the interests of that fund's existing *with-profits policyholders*.

20.2.40 R A material transaction includes a series of related non-material transactions which, if taken together, are material.

20.2.41 G Examples of material transactions include:

(1) a significant bulk outwards *reinsurance* contract;

(2) inwards *reinsurance* of *with-profits business* from another *insurance undertaking*;

(3) a financial engineering transaction that would materially change the profile of any surplus expected to emerge on the *with-profits fund's* existing *insurance business*; and

(4) a significant restructuring of the *with-profits fund*, especially if it involves the creation of new *sub-funds*.

20.2.41A R A *firm* must contact the *FCA* as soon as is reasonably practicable to make arrangements to discuss what actions may be required to ensure the fair treatment of *with-profits policyholders* if, in relation to any *with-profits fund* it operates:

(1) the *firm* reasonably expects, or if earlier, there has been, a sustained and substantial fall in either the volume of new *non-profit insurance contracts*, or in the volume of new *with-profits policies* (effected other than by *reinsurance*), or in both, effected into the *with-profits fund*; or

(2) the *firm* cedes by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect.

20.2.41B G (1) The aim of the discussions in ■ COBS 20.2.41A R is to:

(a) allow the *FCA* to comment on the adequacy of the *firm's* planning; and

(b) seek agreement with the *firm* on any other appropriate actions to ensure *with-profits policyholders* are treated fairly.

(2) If the *firm* is no longer effecting a material volume of new *with-profits policies* (other than by *reinsurance*) into a *with-profits fund*; or if it is ceding by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect, then it may also be appropriate to consider whether, in the particular circumstances of the *firm*, it should be regarded as ceasing to effect new *contracts of insurance* for the purposes of ■ COBS 20.2.54R (3).

(3) In the discussions the *FCA* will have with regard to ■ COBS 20.2.28 R (New business), if the volumes of new business are expected to be

profitable and, in relation to *non-profit insurance business*, it is demonstrated that a fair distribution to *with-profits policyholders* out of the fund can be achieved and the economic value of any expected future profits is likely to be available for distribution during the lifetime of the *with-profits business* for the purposes of COBS 20.2.60 G, then, in the *FCA's* view, it is likely to be reasonable for a *firm* to be satisfied that there will be no adverse effect for *with-profits policyholders*, and accordingly that such business may continue to be written.

Process for reattribution of inherited estates: Policyholder advocate: appointment and role

20.2.42 R A *firm* that is seeking to make a *reattribution* of its *inherited estate* must:

(1) first discuss with the *FCA* (as part of its determination under COBS 20.2.21 R):

(a) its projections for capital required to support existing business, which must include an assessment of:

(i) the *firm's* future risk appetite for the *with-profits fund* and other relevant business; and

(ii) how much of the margin for prudence can be identified as excessive and removed from the projected capital requirements; and

(b) its projections for capital required to support future new business, which must include an assessment of:

(i) new business volumes;

(ii) product terms; and

(iii) pricing margins;

(2) following the discussions referred to in (1), identify at the earliest appropriate point a *policyholder advocate*, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of *policyholders*, to negotiate with the *firm* on behalf of relevant *with-profits policyholders* and seek the approval of the *FCA* for the appointment of the *policyholder advocate* as soon as he is identified, or appoint a *policyholder advocate* nominated by the *FCA* if its approval is not granted; and

(3) involve the policyholder advocate designate at the earliest possible opportunity to enable him to participate effectively in the negotiations about the proposals for the *reattribution*.

20.2.42A R

20.2.43 G The *firm* should include an independent element in the *policyholder advocate* selection process, which may include consulting representative groups of *policyholders* or using the services of a recruitment consultant. When considering an application for approval of a nominee to perform the *policyholder advocate* role, the *FCA* will have regard to the extent to which the *firm* has involved others in the selection process.

20.2.44 G The precise role of the *policyholder advocate* in any particular case will depend on the nature of the *firm* and the *reattribution* proposed. A *firm* will need to discuss, with a view to agreeing, with the *FCA* the precise role of the *policyholder advocate* in a particular case (■ COBS 20.2.45 R). However, the role of the *policyholder advocate* should include:

(1) negotiating with the *firm*, on behalf of the relevant *with-profits policyholders*, the benefits to be offered to them in exchange for the rights or interests they will be asked to give up;

(2) commenting to *with-profits policyholders*, on:

(a) the methodology used for the allocation of benefits amongst the relevant (or groups of) *with-profits policyholders* and the form of those benefits;

(b) the criteria used for determining the eligibility of the various *with-profits policyholders*;

(c) the terms and conditions of the proposals (to the extent that they materially affect the benefits to be offered, or the bonuses that may be added to *with-profits policies*); and

(d) the views expressed by the *independent expert* or the *reattribution expert* (as the case may be), and the *firm's with-profits actuary* on the allocation of any benefits amongst the relevant *with-profits policyholders*; and

(3) telling *with-profits policyholders*, or each group of *with-profits policyholders*, with reasons, whether the *firm's* proposals are in their interests.

Process for reattribution of inherited estates: Policyholder advocate: terms of appointment

20.2.45 R A *firm* must:

(1) notify the *FCA* of the terms on which it proposes to appoint a *policyholder advocate* (whether or not the candidate was nominated by the *FCA*); and

(2) ensure that the terms of appointment for the *policyholder advocate*:

(a) include a description of the role of the *policyholder advocate* as agreed with the *FCA* under ■ COBS 20.2.44 G;

(aA) stress the independent nature of the *policyholder advocate's* appointment and function, and are consistent with it;

(b) define the relationship of the *policyholder advocate* to the *firm* and its *policyholders*;

(c) set out arrangements for communications between the *policyholder advocate* and *policyholders*;

(d) make provision for the resolution of any disputes between the *firm* and the *policyholder advocate*;

(e) specify when and how the *policyholder advocate's* appointment may be terminated;

(f) allow the *policyholder advocate* to communicate freely and in confidence with the *FCA*;

(g) require the *policyholder advocate* to communicate with *policyholders*:

(i) as soon as is practicable after his appointment, having regard to (h)(i) and (iii); and

(ii) thereafter no less frequently than every six *months* for the duration of the *policyholder advocate's* appointment; and

(h) require the *policyholder advocate*:

(i) to make reasonable endeavours to agree with the *firm* the contents of any proposed *policyholder* communications;

(ii) to allow sufficient time for the process in (i) in order to meet any timescales in (g); and

(iii) to provide copies of the final draft of the intended *policyholder* communications, whether or not agreement has been reached in accordance with (i) above, both to the *firm* and to the *FCA* at least seven *days* in advance of the date on which the *policyholder advocate* intends to make the communications.

20.2.46 G A *firm* may include, within the *policyholder advocate's* terms of appointment, arrangements for the *policyholder advocate* to be indemnified in respect of certain claims that may be made against him in connection with the performance of his functions. If such indemnity is included, it should not include protection against any liability arising from acts of bad faith.

Process for reattribution of inherited estates: Reattribution expert

20.2.47 R Where a *firm* is not otherwise required to appoint an *independent expert*, it must:

(1) appoint a reattribution expert to undertake an objective assessment of its *reattribution* proposals, who must be:

(a) nominated or approved by the *appropriate regulator* before he is appointed; and

(b) free from any conflicts of interest that may, or may appear to, undermine his independence or the quality of his report;

(2) ensure that the *reattribution expert's* terms of appointment allow him to communicate freely and in confidence with the *appropriate regulator*; and

(3) require the *reattribution expert* to prepare a report which must be available to the *appropriate regulator*, the *policyholder advocate* and the court (if it is relevant to any court proceedings).

20.2.48 G A *reattribution expert's* report should comply with the applicable rules on expert evidence. The scope and content of the report should be substantially similar to that of the report required of an *independent expert* under SUP 18.2 (Insurance business transfers), as if (where appropriate) a reference to:

(1) the '*scheme report*' was a reference to the '*reattribution expert's* report';

(2) the '*independent expert*' was a reference to the '*reattribution expert*'; and

(3) the 'scheme' was a reference to the proposal for a '*reattribution*'.

Process for reattribution of inherited estates: Information to policyholders

20.2.49 R A *firm* must ensure that every *policyholder* that may be affected by the proposed *reattribution* is sent appropriate and timely information about:

(1) the *reattribution* process, including the role of the *policyholder advocate*, the *independent expert* or *reattribution expert*, as the case may be, and other individuals appointed to perform particular functions;

(2) the *reattribution* proposals and how they affect the relevant *policyholders*, including an explanation of any benefits they are likely to receive and the rights and interests that they are likely to be asked to give up;

(3) the *policyholder advocate's* views on the *reattribution* proposals and any benefits the relevant *policyholders* are likely to receive and the rights and interests that they are likely to be asked to give up; and

(4) the outcome of the negotiations between the *firm* and the *policyholder advocate* about the benefits that will be offered to relevant *with-profits policyholders*, in exchange for the rights and interests that they will be asked to give up.

20.2.50 R An adequate summary of the report by the *reattribution expert* must be made available to every *policyholder* that may be affected by the proposed *reattribution*.

Process for reattribution of inherited estates: Consent of policyholders

20.2.51 R A *firm* must give relevant *with-profits policyholders* the option to:

(1) individually accept or reject the final proposals for the *reattribution*; or

(2) (if the legal process to be followed allows the majority of *policyholders* to bind the minority) vote on whether the *firm* should go ahead with those proposals.

Process for reattribution of inherited estates: Costs

20.2.52 G

(1) *Reattribution* and *insurance business transfer* costs (excluding *policyholder advocate* costs) should be met from shareholder funds. A *firm* may present alternative arrangements if it can show good reasons for doing so.

(2) Shareholders should pay a reasonable proportion of the *policyholder advocate's* costs.

(3) If a *reattribution* proposal is not successful, the *FCA* would expect the costs of the *policyholder advocate* to be met by the *person* initiating the proposal. That will usually be the shareholders of the *firm*.

Ceasing to effect new contracts of insurance in a with-profits fund

20.2.53 R A *firm* must:

(1) inform the *appropriate regulator* and its *with-profits policyholders* within 28 days; and

(2) submit a run-off plan to the *appropriate regulator* as soon as reasonably practicable and, in any event, within three months;

of first ceasing to effect new *contracts of insurance* in a *with-profits fund*.

20.2.54 R A *firm* will be taken to have ceased to effect new *contracts of insurance* in a *with-profits fund*:

(1) when any decision by the *governing body* to cease to effect new *contracts of insurance* takes effect; or

(2) where no such decision is made, when the *firm* is no longer:

(a) actively seeking to effect new *contracts of insurance* in that fund; or

(b) effecting new *contracts of insurance* in that fund, except by increment; or

(3) if the *firm*:

(a) (i) is no longer effecting a material volume of *with-profits policies* (other than by *reinsurance*), into the *with-profits fund*; or

(ii) is ceding by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect; and

(b) cannot demonstrate that it will treat *with-profits policyholders* fairly if it does not cease to effect new *contracts of insurance*.

20.2.55 G For the purposes of ■ COBS 20.2.54R (3) the *FCA* will have regard to, amongst other things, the factors set out in ■ COBS 20.2.41BG (3).

20.2.56 R The run-off plan required by ■ COBS 20.2.53 R must:

(1) include an up-to-date plan to demonstrate how the *firm* will ensure a fair distribution of the closed *with-profits fund*, and its *inherited estate* (if any); and

(2) be approved by the *firm's governing body*.

20.2.57 G (1) A *firm* should also include the information described in Appendix 2.15 (Run-off plans for closed with-profits funds) of the Supervision manual in its run-off plan.

(2) A *firm* should periodically review and update its run-off plan and submit updated versions to the *FCA* when requested to do so.

20.2.58 G When a *firm* tells its *with-profits policyholders* that it has ceased to effect new *contracts of insurance* in a *with-profits fund*, it should also explain:

(1) why it has done so;

(2) what changes it has made, or proposes to make, to the fund's investment strategy (if any);

(3) how closure may affect *with-profits policyholders* (including any reasonably foreseeable effect on future bonus prospects);

(4) the options available to *with-profits policyholders* and an indication of the potential costs associated with the exercise of each of those options; and

(5) any other material factors that a *policyholder* may reasonably need to be aware of before deciding how to respond to this information.

20.2.59 G A *firm* may not be able to provide its *with-profits policyholders* with all of the information described above until it has prepared the run-off plan. In those circumstances, the *firm* should:

(1) tell its *with-profits policyholders* that that is the case;

(2) explain what is missing and give a time estimate for its supply; and

(3) provide the missing information as soon as possible, and within the time estimate given.

20.2.60 G

(1) If *non-profit insurance business* is written in a *with-profits fund*, a *firm* should take reasonable steps to ensure that the economic value of any future profits expected to emerge on the *non-profit insurance business* is available for distribution during the lifetime of the *with-profits business*.

(1A) Where a *with-profits fund* contains assets which may not be readily realisable, the *firm* should take reasonable steps to ensure that the economic value of those assets is made available as part of a fair distribution to *with-profits policyholders*.

(2) Where it is agreed by its *with-profits policyholders*, and subject to meeting the requirements for effecting new *contracts of insurance* in an existing *with-profits fund* (■ COBS 20.2.28 R), a *mutual* may make alternative arrangements for continuing to carry on *non-profit insurance business*, and a *non-directive friendly society* may make alternative arrangements for continuing to carry on non-insurance related business. Where a *mutual* has been granted a *waiver* in accordance with ■ COBS 20.2.61 G, the agreement of its *with-profits policyholders* to alternative arrangements for continuing to carry on *non-profit insurance business* may not be needed.

20.2.61 G

(1) A *mutual* operating a common fund may seek to undertake an exercise to identify that part of the fund to which the *mutual* considers it would be fair for relevant provisions in ■ COBS 20 not to apply.

(2) To give regulatory effect to the identification exercise, the *FCA* expects that a *mutual* will need to apply to the *FCA* to modify the

relevant provisions in ■ COBS 20 and elsewhere which are dependent on the definition of the *with-profits fund*.

(3) A *mutual* will need to demonstrate that the appropriate statutory tests in section 138A of the *Act* are met. The *FCA* expects that *mutuals* will need to do at least the following to allow the *FCA* to consider whether granting the modification would adversely affect the advancement of the *FCA's* consumer protection objective:

(a) demonstrate that the exercise does not amount to a *reattribution*;

(b) demonstrate that its proposals are fair to its *with-profits policyholders*, and other relevant *policyholders*, having regard to the *mutual's* own particular structure, origins and other relevant circumstances, and including reference to the items in (c) to (j) below;

(c) obtain the report of an independent expert approved by, and whose terms of reference are agreed with, the *FCA* on the terms of the *mutual's* proposals and the likely impact and effects on, and fairness to, the *mutual's with-profits policyholders* and other relevant *policyholders*. This report should consider whether the *firm* has sufficiently demonstrated the absence of a *reattribution* under (a). The *FCA* will consider using its powers in section 166 of the *Act* (Reports by skilled persons) in appropriate circumstances;

(d) demonstrate that the *mutual's with-profits policyholders* and other *policyholders* are appropriately engaged and informed about the proposals;

(e) demonstrate that it has complied with the relevant requirements in the *mutual's* constitutional documents, for example that members are appropriately involved in agreeing to any proposals;

(f) demonstrate that the *mutual* has a convincing and robust business case for continuing in business, as opposed to run-off;

(g) demonstrate how, and the extent to which, continuing membership rights will benefit *with-profits policyholders* and other *policyholders*;

(h) explain the nature and terms of any continuing support to be provided to the *with-profits fund* from outside the *with-profits fund*;

(i) demonstrate that *with-profits policyholders* under the *mutual's* proposals will not be at a disadvantage compared to equivalent *with-profits policyholders* in a proprietary *with-profits fund*; and

(j) explain how it proposes to pay any compensation or redress that is, or may become, due to a *policyholder*, or former *policyholder*.

(4) For the purposes of (3)(a) and (c), where the issues to be considered by the independent expert include the extent or value (in the particular circumstances of the *mutual*) of the rights and interests of *with-profits policyholders* in the *with-profits fund*, the *FCA* expects the independent expert's terms of reference to require them to take into account other available analyses of such rights and interests which may be more favourable to *policyholders* than the *mutual's* own analysis. The *FCA* considers that any uncertainty in the extent or value of such rights and interests in the case of a particular *mutual* may mean that the independent expert will need to obtain their own independent legal advice on the issue. In the *FCA's* view the fact of

any uncertainty as to the extent or value of the relevant rights and interests, following receipt of independent legal advice, may itself be taken into account by the independent expert when producing their report. The *FCA* will consider on a case by case basis what further information it may provide to the expert and/or independent legal adviser to ensure that the rights and interests of *policyholders* have been appropriately taken into account.

(5) The *FCA* expects to consult and/or seek information or advice from the *PRA* in accordance with section 3D of the *Act* and the Memorandum of Understanding between the *FCA* and the *PRA* required by section 3E. As part of any such process the *FCA* expects that the *PRA* will wish to consider, among other things, that balance sheet safety and soundness issues have been identified and addressed appropriately.

20.3 Principles and Practices of Financial Management

Production of PPFM

20.3.1 R

(1) A *firm* must:

(a) establish and maintain the *PPFM* according to which its *with-profits business* is conducted (or, if appropriate, separate *PPFM* for each *with-profits fund*); and

(b) retain a record of each version of its *PPFM* for five years.

(2) A *firm's with-profits principles* must:

(a) be enduring statements of the standards it adopts in managing *with-profits funds*; and

(b) describe the business model it uses to meet its duties to *with-profits policyholders* and to respond to longer-term changes in the business and economic environment.

(3) A *firm's with-profits practices* must:

(a) describe how a *firm* manages its *with-profits funds* and how it responds to shorter-term changes in the business and economic environment; and

(b) be sufficiently detailed for a knowledgeable observer to understand the material risks and rewards from effecting or maintaining a *with-profits policy* with it.

(4) A *firm* must not change its *PPFM* unless, in the reasonable opinion of its *governing body*, that change is justified to:

(a) respond to changes in the business or economic environment; or

(b) protect the interests of *policyholders*; or

(c) change the *firm's with-profits practices* better to achieve its *with-profits principles*.

(5) A *firm* may change its *PPFM* if that change:

(a) is necessary to correct an error or omission; or

(b) would improve clarity or presentation without materially affecting the *PPFM's* substance; or

(c) is immaterial.

20.3.2 G [deleted]

20.3.3 G [deleted]

Scope and content of PPFM

20.3.4 R A *firm's PPFM* must cover the issues set out in the table in ■ COBS 20.3.6 R.

20.3.5 R A *firm's PPFM* must cover any matter that has, or it is reasonably foreseeable may have, a significant impact on the *firm's* management of *with-profits funds*, including but not limited to:

(1) any requirements or constraints that apply as a result of previous dealings, including previous business transfer schemes;

(2) the nature and extent of any shareholder or other commitment to support the *with-profits fund*; and

(3) the precise terms and conditions of support asset arrangements, as described in ■ COBS 20.2.34A R.

20.3.6 R Table: Issues to be covered in PPFM

	Subject	Issues		
(1)	Amount payable under a with-profits policy	(a)	Methods used to guide determination of the amount that is appropriate to pay individual *with-profits policyholders*, including:	
			(i)	the aims of the methods and approximations used;
			(ii)	how the current methods, including any relevant historical assumptions used and any systems maintained to deliver results of particular methods, are documented; and
			(iii)	the procedures for changing the current method or any assumptions or parameters relevant to a particular method.
		(b)	Approach to setting bonus rates.	

	Subject	Issues			
		(c)	Approach to smoothing maturity payments and surrender payments, including:		
				(i)	the smoothing policy applied to each type of *with-profits policy*;
				(ii)	the limits (if any) applied to the total cost of, or excess from, smoothing; and
				(iii)	any limits applied to any changes in the level of maturity payments between one period to another.
(2)	Investment strategy	Significant aspects of the *firm's* investment strategy for its *with-profits business* or, if different, any *with-profits fund*, including:			
		(a)	the degree of matching to be maintained between assets relevant to *with-profits business* and liabilities to *with-profits policyholders* and other creditors;		
		(b)	the *firm's* approach to assets of different credit or liquidity quality and different volatility of market values;		
		(c)	the presence among the assets relevant to *with-profits business* of any assets that would not normally be traded because of their importance to the *firm*, and the justification for holding such assets; and		
		(d)	the *firm's* controls on using new asset or liability instruments and the nature of any approval required before new instruments are used.		
(3)	Business risk	The exposure of the *with-profits business* to business risks (new and existing), including the *firm's*:			

	Subject	Issues	
		(a)	procedures for deciding if the *with-profits business* may undertake a particular business risk;
		(b)	arrangements for reviewing and setting a limit on the scale of such risks; and
		(c)	procedures for reflecting the profits or losses of such business risks in the amounts payable under *with-profits policies*.
(4)	Charges and expenses	(a)	The way in which the *firm* applies charges and apportions expenses to its *with-profits business*, including, if material, any interaction with connected firms.
		(b)	The cost apportionment principles that will determine which costs are, or may be, charged to a *with-profits fund* and which costs are, or may be, charged to the other parts of its business of its shareholders.
(5)	Management of inherited estate	Management of any *inherited estate* and the uses to which the *firm* may put that *inherited estate*.	
(6)	Volumes of new business and arrangements on stopping taking new business	If a *firm's with-profits fund* is accepting new *with-profits business*, its practice for review of the limits on the quantity and type of new business and the actions that the *firm* would take if it ceased to take on new business of any significant amount.	
(7)	Equity between the with-profits fund and any shareholders	The way in which the interests of *with-profits policyholders* are, or may be, affected by the interests of any shareholders of the *firm*.	

20.3.7 G The table in ■ COBS 20.3.8 G sets out *guidance* on how various information relevant to some of the issues covered in a *firm's PPFM* (■ COBS 20.3.6 R) might be split between *with-profits principles* and *with-profits practices*. This is an example of the matters a *firm* should address in its *with-profits principles* and *with-profits practices* and is not exhaustive. A *firm* should consider carefully the scope and content of its *PPFM* as appropriate.

20.3.8 G Table: Guidance on with-profits principles and practices

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
(1) Amount payable under a with-profits policy	General (a) Circumstances under which any historical assumptions or parameters, relevant to methods used to determine the amount payable, may be changed;	General (e) For each major class of *with-profits policy*, methods establishing the main assumptions or parameters that decide the output of methods that determine the amount payable; (f) Degree of approximation allowed when assumptions or parameters are applied across generations of *with-profits policyholders* or across different types or classes of *with-profits policies*; (g) Formality with which the methods, parameters or assumptions used are documented; (h) Target range, or target ranges, that have been set for maturity payments; (i) Factors likely to be regarded as relevant to address *policyholders*' interests or security when determining *excess surplus*; and Investment return, expenses or charges and tax (j) How investment return, expenses or charges and tax are brought into account and how the impact of those items is determined on the amount payable. In particular: (i) any distinctions made in recognising the investment return from a subset of the total assets of a *with-profits fund*; (ii) whether expenses are apportioned between all the policies in a *with-profits fund* or apportioned in some other way;

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		(iii) the relationship between the liability to tax attributed to a *with-profits fund* and the tax that the *firm* imputes to determine the amount payable; (iv) impact on the amount payable of any attributed liability to tax of a *with-profits fund* as a result of the *firm* making a transfer to shareholders; and (v) how any other items are brought into account.
	Bonus rates	Bonus rates
	(b) General aims in setting bonus rates and the constraints to which the *firm* may be subject in changing economic circumstances; (c) How the range of *with-profits policies* or generations of *with-profits policies* over which the *firm* believes a single bonus rate would be appropriate is determined and the circumstances under which it believes a new bonus series would be necessary; and	(k) Current approach to setting bonus rates, including the weight given to recent economic experience. For final bonus rates, the description should include any distinctions made between *with-profits policies* that remain in force until contractual dates, or dates on which no market value reduction applies (for example, maturity or retirement dates) and policies that are surrendered or transferred at other dates; (l) Frequency at which bonus rates are re-set or expected to be re-set and the circumstances under which changes in the economic environment would cause the time between re-setting to change; (m) Maximum amount by which annual bonuses would alter if annual bonus rates were reset; (n) Approach to setting any interim bonus rates before the next declaration of annual bonus rates;

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		(o) Relationship or interaction between final bonus rates and any market value reductions, if both can apply at the same time;
		(p) How final bonus rates influence the value of *with-profits policies* that have formulaic surrender or transfer bases (for example, older conventional policies rather than unitised policies); and
	Smoothing	Smoothing
	(d) Statement as to whether smoothing is intended to be neutral over time.	(q) Any differences in approach for: (i) the various types of *with-profits policy*; (ii) different categories of payout, such as between surrendered policies and maturing policies; and (iii) different generations of *with-profits policyholders*.
(2) Investment strategy	(a) How the types, classes or mix of assets are determined; and	(c) Whether and to what extent there is hypothecation of assets;
	(b) Strategy in respect of derivatives and other instruments.	(d) Period between formal reviews of investment strategy;
		(e) Approach to investment in different asset classes, and assets of different credit or liquidity quality, including assets not normally traded; and
		(f) Details of any external support available to the *with-profits fund* and how this affects the investment strategy.
(3) Business risk	(a) Where a *firm* explicitly excludes business risk from a class of *with-profits policies* but there are residual risks, clarification where these risks such as guarantee and	(c) Current limits which apply to the taking on of business risk; and
		(d) Whether and to what extent particular generations of *with-profits policyholders* or classes of *with-profits*

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
	smoothing costs are borne; and (b) Define where compensation costs from a business risk would be borne.	*policies* bear or might bear particular business risks, including for example, crystallised or contingent guarantees to other classes of *policyholders* or whether the out-turn from all business risk is pooled across all *with-profits policies*.
(4) Charges and expenses	(a) Factors that would drive any change to the basis on which the *firm* applies charges to or apportions its actual expenses amongst *with-profits policies*, or exercises any discretion to apply charges to particular *with-profits policies*.	(b) Charges currently applied and the expenses currently apportioned to major classes of *with-profits policies*; (c) Relationship between the *firm's* actual charges and expenses, as applied to determine the amounts payable under *with-profits policies*, and the charges and expenses borne by the *with-profits fund*; (d) Circumstances under which expenses will be charged to the *with-profits fund* at an amount other than cost, and the reasons why; and (e) Interval for reviewing any arrangements for out-sourced services, including those provided by connected parties, giving a broad indication of the terms for termination.
(5) Management of inherited estate	(a) Preferred size or scale of *inherited estate* and implications for the values of the *with profits policies*; and (b) Any existing division of the *inherited estate* between *with-profits funds*; and (c) Any constraints on the freedom to deal with the *inherited es*	(d) How the *inherited estate* is used, for example, in meeting costs; (e) Whether the investment strategy for the *inherited estate* differs from the rest of the *with-profits fund*; and (f) Any current guidelines in place as to the size or scale of the *inherited estate* or as to

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
	tate as a result of previous dealings.	how and over what time period the *inherited estate* would be managed, if it becomes too large or too small.
(6) Equity between the with-profits fund and any shareholders	(a) Arrangements for, and any changes to, profit sharing between shareholders and *with-profits policyholders*.	(b) Current basis on which profit between *with-profits policyholders* and shareholders is divided; and (c) Whether the pricing of any policies being written, and particular policies open to new business, appear to be significantly and systematically reducing the *inherited estate* if the shareholder transfer is taken into account.

20.4 Communications with with-profits policyholders

Provision and publication of PPFM

20.4.1 R A *firm* must:

(1) on request, provide its *PPFM*, or the *PPFM* applicable to specified *with-profits funds*:

(a) free of charge to its *with-profits policyholders*; or

(b) for a reasonable charge to any person who is not its *with-profits policyholder*; and

(2) if the *firm* publishes its *PPFM* on its website, prominently signpost its location there.

Notification of changes

20.4.2 R A *firm* must send its *with-profits policyholders* who are affected by any change in its *PPFM*, written notice, setting out any:

(1) proposed changes to the *with-profits principles*, three *months* in advance of the effective date; and

(2) changes to the *with-profits practices*, within a reasonable time.

20.4.3 R A *firm* need not give the notice required if the change to its *PPFM*:

(1) is necessary to correct an error or omission; or

(2) would improve clarity or presentation without materially affecting the *PPFM's* substance; or

(3) is immaterial.

Requirements on EEA insurers

20.4.4 R [deleted]

20.4.5 R [deleted]

20.4.6 G [deleted]

Annual report to with-profits policyholders

20.4.7 R A *firm* must produce an annual report to its *with-profits policyholders*, which must:

(1) state whether, throughout the *financial year* to which the report relates, the *firm* believes it has complied with its obligations relating to its *PPFM* and setting out its reasons for that belief;

(2) address all significant relevant issues, including the way in which the *firm* has:

(a) exercised, or failed to exercise, any discretion that it has in the conduct of its *with-profits business*; and

(b) addressed any competing or conflicting rights, interests or expectations of its *policyholders* (or groups of *policyholders*) and, if applicable, *shareholders* (or groups of *shareholders*), including the competing interests of different classes and generations.

20.4.8 G The following documents should be annexed to the annual report in this section:

(1) the report to *with-profits policyholders* made by a *with-profits actuary* in respect of each financial year (see SUP 4.3.16AR(4)); and

(2) any statement or report provided by the *person* or committee who provides the independent judgement under the *firm's* governance arrangements for its *with-profits business*.

20.4.9 G In preparing the annual report to *with-profits policyholders*, a *firm* should take advice from a *with-profits actuary*.

20.4.10 G A *firm* should make the annual report available to *with-profits policyholders* within six *months* of the end of the *financial year* to which it relates. A *firm* should notify its *with-profits policyholders* in any annual statements how copies of the report can be obtained.

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20.5 With-profits governance

Requirement to appoint a with-profits committee or advisory arrangement

20.5.1 R A *firm* must, in relation to each *with-profits fund* it operates:

(1) appoint:

(a) a *with-profits committee*; or

(b) a *with-profits advisory arrangement* (referred to in this section as an 'advisory arrangement'), but only if appropriate, in the opinion of the *firm's governing body*, having regard to the size, nature and complexity of the fund in question;

(2) ensure that the *with-profits committee* or advisory arrangement operates in accordance with its *terms of reference*; and

(3) make available a copy of any *terms of reference* on the *firm's* website, or if the *firm* does not have a website, at the request of *policyholders*.

20.5.2 G (1) Ultimate responsibility for managing a *with-profits fund* rests with the firm through its *governing body*. The role of the *with-profits committee* or advisory arrangement is, in part, to act in an advisory capacity to inform the decision-making of a *firm's governing body*. The *with-profits committee* or advisory arrangement also acts as a means by which the interests of *with-profits policyholders* are appropriately considered within a *firm's* governance structures. The *with-profits committee* or advisory arrangement should address issues affecting *policyholders* as a whole or as separately identifiable groups of *policyholders* generally rather than dealing with individual *policyholder* complaints or taking management decisions with respect to a *with-profits fund*.

(2) If a *firm* considers that it is appropriate to appoint an advisory arrangement, a *firm's governing body* will need to decide whether it is appropriate to appoint an independent person or one or more *non-executive directors* to carry out the role. The *FCA* expects *firms* to make this determination according to the nature, size and complexity of the fund in question. So the larger or more complex the fund is, the more likely it would be that it would be appropriate to appoint an independent person.

(3) Where a *firm* has appointed a *with-profits committee* to one of its *with-profits funds* it may also decide to appoint that *with-profits committee* to some or all of its other *with-profits funds*, even if the

firm would not have determined it appropriate to appoint a *with-profits committee* to those other funds when considered individually having regard to their size, nature or complexity.

Terms of reference of with-profits committee or advisory arrangement

20.5.3 R A *firm* must ensure that the *terms of reference* contain, as a minimum, terms having the following effect:

(1) the role of the *with-profits committee* or advisory arrangement is, as relevant, to assess, report on, and provide clear advice and, where appropriate, recommendations to the *firm's governing body* on:

(a) the way in which each *with-profits fund* is managed by the *firm* and, if a *PPFM* is required, whether this is properly reflected in the *PPFM*;

(b) if applicable, whether the *firm* is complying with the principles and practices set out in the *PPFM*;

(c) whether the *firm* has addressed effectively the conflicting rights and interests of *with-profits policyholders* and other *policyholders* or stakeholders including, if applicable, shareholders, in a way that is consistent with *Principle* 6 (treating customers fairly); and

(d) any other issues with which the *firm's governing body*, *with-profits committee* or advisory arrangement considers *with-profits policyholders* might reasonably expect the *with-profits committee* or advisory arrangements to be involved;

(2) that the *with-profits committee* or advisory arrangement must:

(a) decide on the specific matters it will consider in order to enable it to carry out its role described in (1)(a) to (d) as appropriate to the particular circumstances of the *with-profits fund(s)*; and

(b) in any event give appropriate consideration to the following non-exhaustive list of specific matters:

(i) the identification of surplus and *excess surplus*, the merits of its distribution or retention and the proposed distribution policy;

(ii) how bonus rates, smoothing and, if relevant, market value reductions have been calculated and applied;

(iii) if relevant, the relative interests of *policyholders* with and without valuable guarantees;

(iv) the *firm's* with-profits customer communications such as annual policyholder statements and product literature and whether the *with-profits committee* or advisory arrangement wishes to make a statement or report to *with-profits policyholders* in addition to the annual report made by a *firm*;

(v) any significant changes to the risk or investment profile of the *with-profits fund* including the management of material illiquid investments and the *firm's* obligations in relation to *strategic investments*;

(vi) the *firm's* strategy for future sales supported by the assets of the *with-profits fund* and its impact on surplus;

(vii) the impact of any management actions planned or implemented;

(viii) relevant management information such as customer complaints data (but not necessarily information relating to individual customer complaints);

(ix) the drafting, review, updating of and compliance with run-off plans, court schemes and similar matters;

(x) the costs incurred in operating the *with-profits fund*;

(xi) the identification and extent of the *firm's with-profits funds*, with particular regard to the considerations as to whether a part of the *with-profits fund* constitutes a separate *with-profits fund* in accordance with ■ COBS 20.1A.2 R (Sub-funds); and

(xii) the use and purpose of, and terms under which, support assets are available to the *with-profits fund*, having regard to the considerations in ■ COBS 20.2.33 G to ■ COBS 20.2.34 G and ■ COBS 20.2.34A R.

(3) that any person appointed as a member of the *with-profits committee* or as a person carrying out the advisory arrangement must have the appropriate skills, knowledge and experience to perform, or contribute to, as appropriate, the role set out in (1) and (2);

(4) if the firm appoints a *with-profits committee*:

(a) that there must be three or more members;

(b) that the quorum for any meeting (or decision by written procedure) must be at least half of the number of, and no less than two, members; and

(5) that the *with-profits committee* or advisory arrangement must:

(a) advise the *governing body* on the suitability of candidates proposed for appointment as the *with-profits actuary*; and

(b) assess the performance of the *with-profits actuary* at least annually, and report its view to the *governing body* of the *firm*.

20.5.4 G

(1) The *FCA* expects that a *with-profits committee* will meet at least quarterly and ad hoc if required.

(2) The *FCA* expects that, in general, a *with-profits committee* or advisory arrangement will work closely with the *with-profits actuary*, and obtain his opinion and input as appropriate.

Role of with-profits committee or advisory arrangement in the firm's governance

20.5.5 R A *firm* must:

(1) ensure that its *governing body*, in the context of its consideration of issues referred to in ■ COBS 20.5.3R (1)(a) to ■ (d) and ■ (2)(b)(i) to ■ (x):

(a) obtains, as relevant, assessments, reports, advice and/or recommendations of the *with-profits committee* or advisory arrangement, if the *governing body*, the *with-profits committee*

or advisory arrangement considers that significant issues concerning the interests of *with-profits policyholders* need to be considered by the *firm*;

(b) allows the *with-profits committee* or advisory arrangement sufficient time to enable it to provide fully considered input on the issues to be considered;

(c) considers fully and gives due regard to the input of the *with-profits committee* or advisory arrangement when determining issues concerning the management of the *with-profits funds* and the interests of *with-profits policyholders*;

(d) if the *governing body* decides to depart in any material way from the advice or recommendations of the *with-profits committee* or advisory arrangement, sets out fully its reasons and allows the *with-profits committee* or advisory arrangement a reasonable period to consider them and respond; and

(e) considers any further representations from the *with-profits committee* or advisory arrangement and, if appropriate, sets out fully any additional reasons if it continues to depart from the *with-profits committee* or advisory arrangement's advice or recommendation;

(2) provide a *with-profits committee* or advisory arrangement with sufficient resources as it may reasonably require to enable it to perform its role effectively;

(3) notify the *FCA* of the decision of the *governing body* to depart from the advice or recommendation of the *with-profits committee* or advisory arrangement if the *with-profits committee* or advisory arrangement considers that the issue is sufficiently significant and requests of the *governing body* that the *FCA* be informed; and

(4) consult the *with-profits actuary* on the appointment of a new member of the *with-profits committee* or of the person or persons carrying out the advisory arrangement.

20.5.6 G

(1) ■ COBS 20.5.5R (2) requires that a *firm* provides a *with-profits committee* or advisory arrangement with sufficient resources. A *with-profits committee* or advisory arrangement should be able to obtain external professional, including actuarial, advice, at the expense of the *firm*, if the *with-profits committee* or advisory arrangement considers the advice to be necessary to perform its role effectively. In a proprietary *firm* the *with-profits committee* or advisory arrangement should be able to request that the cost of the external professional advice either is not chargeable to the *with-profits fund* in question, or is shared with the *with-profits fund*, according to whether the issue under consideration is wholly or partly to the benefit of the *firm* rather than *policyholders*. A *with-profits committee* or advisory arrangement should also be adequately supported by the *firm's* own internal resources and support functions. This may include the *firm* ensuring that relevant employees, including the *with-profits actuary*, are made sufficiently available, and provide relevant information and input, to assist the *with-profits committee* in its role, as required.

(2) If the *with-profits committee* or advisory arrangement wishes to make a statement or report to *with-profits policyholders* in addition to the

annual report made by a *firm*, the effect of ■ COBS 20.5.5R (2) is that a *firm* will need to facilitate this.

(3) In order to comply with ■ SYSC 3.2.20 R the *FCA* expects *firms* to keep full records of all requests of, and material produced by, the *with-profits committee* or advisory arrangement, and of all decisions and reasons of the *governing body* as described in ■ COBS 20.5.5R (1)(d) and ■ (e).

(4) For the purposes of ■ COBS 20.5.5R (3), the *FCA* expects that it will only be in exceptional circumstances that a *with-profits committee* or alternative arrangement will consider a departure from a recommendation or advice to be sufficiently significant to warrant its making a request of the *governing body* that the *FCA* be informed.

Assessment of independence by governing body

20.5.7 G

(1) The *FCA* expects the *governing body* of the *firm* to decide whether a member of the *with-profits committee* or a person (other than a *non-executive director*) carrying out the advisory arrangement is independent. The *FCA* expects a *firm's governing body* to adopt the following approach and have regard to the following factors when making this assessment:

(a) the *governing body* should determine whether the person is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the person's judgment; and

(b) the *governing body* should state its reasons if it determines that a person is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the person:

(i) has been an employee of the *firm* or group within the last five years; or

(ii) has, or has had within the last three years, a material business relationship with the *firm* either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the *firm*; or

(iii) has received or receives additional remuneration from the *firm*, participates in the *firm's* share option or a performance-related pay scheme, or is a member of the *firm's* pension scheme; or

(iv) has close family ties with any of the *firm's* advisers, directors or senior employees; or

(v) has significant links with the *firm's* directors through involvement in other companies or bodies; or

(vi) represents a significant shareholder; or

(vii) has served on the *governing body* for more than nine years from the date of their first election.

(2) If a *firm* appoints one or more *non-executive directors* to carry out the advisory arrangement, the *FCA* expects the *governing body* of the *firm* to be satisfied that that person or persons is or are adequately able to provide independent judgment.

Governance arrangements in relation to the PPFM

20.5.8 G In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering (■ SYSC 3.2.6 R), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records, any applicable *PPFM*. These arrangements should:

(1) be appropriate to the scale, nature and complexity of the *firm's with-profits business*; and

(2) include the approval of the *firm's PPFM* by its *governing body*.

Chapter 21

Permitted Links and conditional permitted links

21

21.1 Application

21.1.1 R The *rules* in this section apply on an ongoing basis to *insurers* who effect G1980*linked long-term* contracts.

21.1.-1A R Where this chapter sets out conditions or requirements in relation to *conditional permitted links*, those conditions or requirements also apply in relation to any *conditional permitted links* that a *linked fund* invests in via *permitted units*.

Limit to the application of COBS 21.3

21.1.1A R ■ COBS 21.3 (Further rules for firms engaged in linked long-term insurance business) applies only in respect of *linked long-term contracts of insurance* where the investment risk is borne by a *policyholder* who is a natural person.

21.1.2 R

21.2 Rules for firms engaged in linked long-term insurance business

21.2.1 R For the purposes of determining *policyholder* benefits, a *firm* must ensure that the values of its *permitted links* and *conditional permitted links* are determined fairly and accurately.

21.2.1A R An *insurer* must not contract to provide benefits under *linked long-term contracts of insurance* that are determined wholly or partly, directly or indirectly, by reference to fluctuations in any index or wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than in accordance with the rules in this section.

21.2.1B G *Insurers* effecting *linked long-term contracts of insurance* are obliged to comply with the requirements on investments in the PRA Rulebook Solvency II Firms Investments.

21.2.2 R

21.2.3 R

21.2.4 R A *firm* must notify its *linked policyholders* of the risk profile and investment strategy for the *linked fund*:

(1) at *inception*;

(2) before making any material changes; and

(3) (in relation to *conditional permitted links*) at other appropriate times, taking into account a *policyholder's* needs.

Reinsurance

21.2.4A R A *firm* that has entered into a *reinsurance contract* in respect of its linked long-term insurance business must nevertheless discharge its responsibilities under its *linked long-term insurance contracts*, as if no *reinsurance contract* had been effected.

21.2.4B G To comply with the requirements of ■ COBS 21.2.4A R, a *firm* should:

(1) disclose to *policyholders* the implications of any credit-risk exposure they may face in relation to the solvency of the reinsurer; and

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(2) suitably monitor the way the reinsurer manages the business in order to discharge its continuing responsibilities to *policyholders*.

21.2.5 R

21.2.6 R

21.2.7 R

Notification to the FCA

21.2.8 R A *firm* must notify the *FCA* in writing as soon as it becomes aware of any failure to meet the requirements of ■ COBS 21, or of the PRA Rulebook Solvency II Firms Investments or the PRA Rulebook: Non-Solvency II firm sector to the extent applicable to *linked long-term contracts of insurance*.

21.2.9 G In considering what action to take in response to written notification of a failure to meet the requirements of this section, the *FCA* will have regard to the extent to which the relevant circumstances are exceptional and temporary and to any other reasons for the failure.

21.3 Further rules for firms engaged in linked long-term insurance business

Application

21.3.-1 R The *rules* in this section apply to *linked long-term contracts of insurance* where the investment risk is borne by a *policyholder* who is a natural person.

Permitted links and conditional permitted links

21.3.1 R An *insurer* must not contract to provide benefits under *linked long-term contracts of insurance* that are determined:

(1) wholly or partly, or directly or indirectly, by reference to fluctuations in any index other than an *approved index*;

(2) wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than any of the following:

(a) *approved securities*;

(b) *listed securities*;

(c) *permitted unlisted securities*;

(d) *permitted land and property*;

(e) *permitted loans*;

(f) *permitted deposits*;

(g) *permitted scheme interests*;

(h) *approved money market instruments* meeting the requirements in ■ COBS 21.3.6 R to ■ COBS 21.3.8 G;

(i) cash;

(j) *permitted units*;

(k) *permitted stock lending*;

(l) *permitted derivatives contracts*; and

(m) *conditional permitted links*.

21.3.1A R A *firm* must classify the types of property listed in ■ COBS 21.3.1R (2)(a) to ■ (2)(m) according to their economic behaviour ahead of their legal form.

21.3.2 G (1) Nothing in these rules prevents a *firm* making allowance in the value of any *permitted link* or *conditional permitted link* for any notional

tax loss associated with the relevant *linked assets* for the purposes of fair pricing.

(2) In the *FCA's* view the Consumer Prices Index, as well as the Retail Prices Index, is a national index of retail prices and so may be used as an *approved index* for the purposes of ■ COBS 21.3.1R (1).

21.3.3 R

21.3.4 G

21.3.5 R

Money-market instruments

21.3.6 R A *money-market instrument* will be regarded as normally dealt in on the money market if it:

(1) has a maturity at issuance of up to, and including, 397 *days*; or

(2) has a residual maturity of up to, and including, 397 *days*; or

(3) undergoes regular yield adjustments in line with money market conditions at least every 397 *days*; or

(4) undergoes regular yield adjustments in line with money market conditions at least every 397 *days*.

21.3.7 R

(1) A *money-market instrument* will be regarded as liquid if it can be sold at limited cost in an adequately short timeframe.

(2) A *money-market instrument* will be regarded as having a value which can be accurately determined at any time if accurate and reliable valuations systems, which fulfil the following criteria, are available:

(a) enabling the *firm* to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and

(b) based either on market data or on valuation models, including systems based on amortised costs.

(3) A *money-market instrument* that is normally dealt in on the money market and is admitted to, or dealt in, on an *eligible* market will be presumed to be liquid and have a value which can be accurately determined at any time, unless there is information available to the *firm* that would lead to a different determination.

21.3.8 G A *firm* should assess the liquidity of a *money-market instrument* in accordance with *CESR's UCITS eligible assets guidelines*, with respect to *UK* provisions which implemented article 4(1) of the *UCITS eligible assets Directive*.

Permitted stock lending transactions

21.3.9 R A *permitted stock lending* transaction is one which, for a *Solvency II firm*, satisfies the requirements in COBS 21.3.11 R to COBS 21.3.12 R and, for an *insurer* which is not a *Solvency II firm*, satisfies INSPRU 3.2.36A R to INSPRU 3.2.42 G.

21.3.10 R The specific method of *stock lending* permitted is an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers *securities* to the borrower other than by way of *sale* and the borrower is to transfer those *securities*, or *securities* of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing *collateral* to the "lender" to cover him against the risk that the future transfer back of the *securities* may not be satisfactorily completed.

Stock lending: requirements

21.3.11 R

(1) The *stock lending* arrangement is of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), and:

(a) all the terms of the agreement under which *securities* are to be reacquired by the *firm* for the account of the unit-linked fund are in a form which is acceptable to the *firm* and in accordance with good market practice;

(b) the counterparty is:

(i) an *authorised person*; or

(ii) a *person* authorised in an *EEA State*; or

(iii) a *person* registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or

(iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to *OTC derivatives*, by at least one of the following federal banking supervisory authorities of the United States of America:

(A) [deleted];

(B) the Federal Deposit Insurance Corporation;

(C) the Board of Governors of the Federal Reserve System; and

(D) the Office of Thrift Supervision; and

(c) *collateral* is obtained to secure the obligation of the counterparty under the terms in (a) and the *collateral* is:

(i) acceptable to the *firm*;

(ii) adequate; and

(iii) sufficiently immediate; and

(d) for the purposes of *property-linked assets* only:

(i) where the *linked policyholder* bears the whole of the risk associated with the *stock lending* transaction, the *linked policyholder* receives the whole of the recompense (net of fees and expenses);

(ii) the extent of any risk that the *linked policyholder* bears in relation to the *stock lending* transaction is disclosed to them; and

(iii) where the risk associated with the *stock lending* transaction is borne outside the *linked fund*, the linked fund receives a fair and reasonable recompense for the use of the *linked policyholders*' funds.

(2) The counterparty for the purpose of (1) is the *person* who is obliged under the agreement in (1)(a) to transfer to the *firm* the *securities* transferred by the *firm* under the *stock lending* arrangement or *securities* of the same kind.

(3) ■ COBS 21.3.11R (1)(c) does not apply to a *stock lending* transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

Stock lending: treatment of collateral

21.3.12 R

(1) *Collateral* is adequate for the purposes of this section only if it is:

(a) transferred to the *firm* or the *firm's* agent;

(b) at least equal in value, at the time of the transfer to the *firm* or its agent, to the value of the *securities* transferred by the *firm*; and

(c) in the form of one or more of:

(i) cash;

(ii) a certificate of *deposit*;

(iii) a letter of *credit*;

(iv) a *readily realisable security*;

(v) commercial paper with no embedded *derivative* content;

(vi) a *qualifying money market fund*.

(2) *Collateral* is sufficiently immediate for the purposes of this section if:

(a) it is transferred before or at the time of the transfer of the *securities* by the *firm*; or

(b) the *firm* takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the *day* of the transfer.

(3) The *firm* must ensure that the value of the collateral at all times is at least equal to the value of the *securities* transferred by the *firm*.

(4) The duty in (3) may be regarded as satisfied in respect of *collateral* the validity of which is about to expire, or has expired, where the *firm* takes reasonable care to determine that sufficient *collateral* will

be transferred, at the latest, by the close of business on the *day* of expiry.

Permitted derivatives contracts

21.3.13 R A *permitted derivatives contract* is one which:

(1) for a *Solvency II firm*, is effected or issued:

(a) on or under the rules of a *regulated market*; or

(b) off-market with an *approved counterparty*; and

satisfies ■ COBS 21.3.14 G; and

(2) for an *insurer* which is not a *Solvency II firm*, satisfies ■ INSPRU 3.2.5 R to ■ INSPRU 3.2.35A G with the exception of ■ INSPRU 3.2.18 R; and

(3) in each of (1) and (2) the provisions are applied in relation to assets covering liabilities in respect of *linked long-term* contracts of insurance.

21.3.14 G *Solvency II firms* are also required to comply with the PRA Rulebook Solvency II Firms Investment and ensure that the use of *derivative* contracts is adequately covered. *Firms* are also referred to the *rules* in ■ COLL 5.3 (Derivative Exposure) in relation to the use of *derivatives* in investment funds and the further guidance from CESR and its successor body, ESMA, which represent good practice in this area.

Conditional permitted links

21.3.15 R A *conditional permitted link* is any of the following property where the conditions in ■ COBS 21.3.16R are met:

(1) conditional permitted unlisted securities;

(2) conditional permitted immovables;

(3) conditional permitted loans;

(4) conditional permitted scheme interests; and

(5) (only in respect of a *linked fund* included in the *default arrangement* of a *qualifying scheme*) *conditional permitted long-term asset funds*.

21.3.16 R The conditions for the property in ■ COBS 21.3.15R to be a *conditional permitted link* are that an *insurer* must ensure, on a continuing basis, that:

(1) a *linked policyholder* is not prevented by the nature of any *conditional permitted link* from exercising any right under the *linked long-term contract of insurance* within the timeframe specified in that contract and, in any event;

(a) (in relation to rights to take benefits due under the contract) within a reasonable timeframe based on the needs of the *linked policyholder*; and

(b) (in relation to other rights under the contract) within a timeframe that may be reasonably necessary to allow the *firm* to

manage the *linked fund* prudently and in the best interests of all relevant *policyholders* linked to the fund.

(2) the investment risks of any *conditional permitted links*, both individually and in combination with other investments within a linked fund, are suitable and appropriate for:

(a) circumstances where investment risk is borne by a *linked policyholder*;

(b) the expected period to maturity of the *linked long-term contract of insurance*; and

(c) the purpose for which the *linked policyholder* holds the *linked long-term contract of insurance*.

(3) (only in respect of *conditional permitted long-term asset funds*) the *linked fund* investing in *conditional permitted long-term asset funds* may only be included in the *default arrangement* of a *qualifying scheme*.

21.3.17 G

(1) Rights under a *linked long-term contract of insurance* which may be relevant for the purposes of ■ COBS 21.3.16R(1) would include a *linked policyholder's* right to:

change the property to which the benefits of the *linked long-term contract of insurance* are linked;

take benefits due under the *linked long-term contract of insurance*. Benefits due are those which the contract envisages will be paid at a particular date or on the occurrence of a particular event; or

withdraw early or transfer the proceeds of, or benefits under, the linked *long-term contract of insurance*. Early withdrawal refers to withdrawals prior to the time or event for paying benefits due that is specifically envisaged in the contract.

(2) A *firm* will have to pay benefits due under a *linked long-term contract of insurance* (for example on death or maturity) as specified in the contract. A *firm* is not permitted to specify in the contract that it can defer the payment of any such benefits as, in any event, benefit payments have to be made within a reasonable period based on the needs of the *policyholder*.

(3) A *linked long-term contract of insurance* may provide that the *policyholder's* right to exercise rights under (1)(a) or (1)(c) is deferred for as long as may be reasonably necessary to allow the *firm* to ensure that a *linked fund* can be managed in a manner that is prudent and in the best interests of all relevant *policyholders* linked to the fund. The *firm* will need to ensure that it explains clearly to a *policyholder* the impact of any such provision on the *policyholder's* rights to withdraw early, switch or transfer.

21.3.18 G

The assessment in ■ COBS 21.3.16R(2), in relation to a *linked fund* which is included in a default or similar arrangement for a pension scheme, would include ongoing consideration of:

(1) whether the investment risks of any *conditional permitted links* remain suitable and appropriate for a particular cohort of *linked policyholders*, including as that cohort moves toward retirement; and

(2) where the *linked fund* contains *conditional permitted long-term asset funds*, the total exposure of the *default arrangement* to *conditional permitted long-term asset funds* and other *investments* of similar risk profile to that of *conditional permitted long-term asset funds*.

Conditional permitted links: requirements

21.3.19 R Where a *linked fund* is invested in any *conditional permitted link*, no more than 35% of the gross assets of the *linked fund*, when aggregated together, can be invested in:

(1) *permitted scheme interests* in (b)(v) of the *Glossary* definition of that term; and

(2) *conditional permitted links*.

21.3.19A R The gross assets that a *linked fund* invests in *conditional permitted long-term asset funds* must not be included in any part of the calculation when working out whether the limit set out in ■ COBS 21.3.19R has been exceeded.

21.3.20 R Where a *linked fund* is invested in any *conditional permitted link*, the information that a *firm* must give a *linked policyholder* under ■ COBS 21.2.4R must also prominently include, clearly and in language capable of being understood by a *linked policyholder*:

(1) an explanation of the risks associated with any *conditional permitted links* and/or gross assets in *permitted scheme interests* in (b)(v) of the *Glossary* definition of that term exceeding 20%, how these might crystallise and how they might impact on a *linked policyholder*;

(2) a description of the tools and arrangements which the *insurer* would propose using, including those required by *FCA rules*, to mitigate the risks in (1);

(3) an explanation of the circumstances in which these tools and arrangements would typically be deployed and the likely consequences for *linked policyholders*; and

(4) an explanation of the possible impact on the *policyholder* of any provision in a *linked long-term contract of insurance* permitted under this section which allows for the deferral of the exercise of any rights under the contract.

Chapter 22

Restrictions on the distribution of certain complex investment products

22

22.2 Restrictions on the retail distribution of mutual society shares

22.2.1 R

(1) The requirements in this section apply to a *firm* when *dealing* in or *arranging* a *deal* in a *mutual society share* with or for a *retail client* in the *United Kingdom* where the *retail client* is to enter into the *deal* as buyer.

(2) The requirements in this section do not apply if:

(a) the *firm* has taken reasonable steps to ensure that one (or more) of the exemptions in ■ COBS 22.2.4R applies; or

the *deal* relates to the trading of a *mutual society share* in the secondary market.

In this section, a *retail client* of the *firm* includes a *person* who would be a *retail client* if he were receiving services in the course of the *firm* carrying on a *regulated activity*.

22.2.1A G

■ COBS 22.2 does not apply in relation to deferred shares issued by a *credit union*. *Firms* are reminded that ■ CREDS 3A contains requirements regarding the retail distribution of these shares.

Risk warning requirement

22.2.2 R

The *firm* must give the *retail client* the following risk warning on paper or another *durable medium* and obtain confirmation in writing from the *retail client* that he has read it, in good time before the *retail client* has committed to *buy* the *mutual society share*:

"The investment to which this communication relates is a share. Direct investment in shares can be high risk and is very different to investment in deposit accounts or other savings products. In particular, you should note that:

() the entire amount you invest is at risk;

() income, distribution or dividend payments are not guaranteed, are entirely discretionary, and may be suspended or cancelled at any time, for any reason;

() the share is a perpetual instrument with no maturity date, and there is no obligation on the issuer to buy the share back;

() the share may be difficult to sell on for the price you paid for it, or any price; and

() investing more than 10% of your savings or net investment portfolio in this type of instrument is unlikely to be in your best interests."

Further requirements for non-advised, non-MiFID sales

22.2.3 R

(1) The requirements in (2) and (3) must be met if:

(a) the *firm* is not providing an *investment service* in the course of *MiFID or equivalent third country business*; and

(b) the *retail client* is not otherwise receiving a *personal recommendation* on the *mutual society share* from the *firm* or another *person*.

(2) The *firm* must give the *retail client* the following statement on paper or another *durable medium* and obtain confirmation in writing from the *retail client* that he or she has signed it, in good time before the *retail client* has committed to *buy* the *mutual society share*:

"I make this statement in connection with proposed investment in mutual society shares. I have been made aware that investing more than 10% of my net assets in mutual society shares is unlikely to be in my best interests. I declare that the proposed investment would not result in more than 10% of my net assets being invested in mutual society shares. Net assets for these purposes mean my financial assets after deduction of any debts I have, and do not include:

(a) the property which is my primary residence, any amount owed under a mortgage relating to the purchase of that property, or any money raised through a loan secured on that property;

(b) any rights of mine under a qualifying contract of insurance (for example, a life assurance or critical illness policy);

(c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are) or may be entitled; or

(d) any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

I accept that the investment to which this statement relates will expose me to a significant risk of losing all the money invested.

Signature:

Date: "

(3) The *firm* must assess whether investment in the *mutual society share* is appropriate for the *retail client*, complying with the requirements in ■ COBS 10 as though the *firm* was providing non-advised *investment services* in the course of *MiFID or equivalent third country business*.

22.2.4 R

Each of the exemptions listed below applies only if the *retail client* is of the type described for the exemption and provided any additional conditions for the exemption are met.

Title	Type of retail client	Additional conditions
Certified high net worth investor	(a)An individual who meets the requirements set out in	The *firm* must consider that the *mutual society share* is likely to be suitable for that indi-

Title	Type of retail client	Additional conditions
	COBS 4.12.6R; or (b) a *person* (or *persons*) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) above.	vidual, based on a preliminary assessment of that individual's profile and objectives (see COBS 4.12.5G(2)).
Certified sophisticated investor	(a)An individual who meets the requirements set out in COBS 4.12.7R; or (b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the *firm's* client.	Not applicable.
Self-certified sophisticated investor	(a)An individual who meets the requirements set out in COBS 4.12.8R; or (b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another *person* who is the *firm's* client.	Not applicable.

Adaptation of other rules and guidance to mutual society shares

22.2.5 R

(1) For the purposes of any assessments or certifications required by the exemptions in ■ COBS 22.2.4R, any references in ■ COBS 4.12 provisions to *non-mainstream pooled investments* must be read as though they are references to *mutual society shares*.

(2) If the *firm* is relying on the exemptions for *certified high net worth investors*, *certified sophisticated investors* or *self-certified sophisticated investors* to comply with this section, the statement the investor must sign should have references to *non-mainstream pooled investments* replaced with references to *mutual society shares*.

(2) The *firm* must give the *retail client* a written copy of any risk warning or statement that that individual has been asked to sign for the purposes of compliance with this section.

Record keeping

22.2.6 R A *firm* which carries on an activity which is subject to this section must comply with the following record-keeping requirements:

(1) the *person* allocated the *compliance oversight function* in the *firm* must make a record at or near the time of the activity certifying it complies with the requirements set out in this section;

(2) the making of the record required in (1) may be delegated to one or more *employees* of the *firm* who report to and are supervised by the *person* allocated the *compliance oversight function*, provided the process for certification of compliance has been reviewed and approved by the *person* allocated the *compliance oversight function* no more than 12 months before the date of the *deal*;

(3) the record in (1) must include information and evidence demonstrating compliance with each of the requirements in this section, as applicable;

(4) if the requirements in ■ COBS 22.2.2R and ■ COBS 22.2.3R did not apply because the *firm* relied on one of the exemptions, the record in (1) must include which exemption was relied on, together with the reason why the *firm* is satisfied that that exemption applies;

(5) where the *firm* relies on the *certified high net worth investor*, the *certified sophisticated investor* or the *self-certified sophisticated investor* exemption, the record required in (1) must include a copy of the certificate or investor statement (as signed by the investor) and of the warnings or indications required by the exemption;

(6) a *firm* must retain the record required in (1) for five years if it relates to *MiFID* or *equivalent third country business*, and otherwise for three years.

Electronic documents

22.2.7 R In this section:

(1) any requirement that a document is signed may be satisfied by an electronic signature or electronic evidence of assent; and

(2) any references to writing should be construed in accordance with ■ GEN 2.2.14R and its related *guidance* provisions.

22

22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

Restrictions

22.3.1 R

(1) The restrictions in this section apply in relation to the following *investments*:

(a) a *contingent convertible instrument*; or

(b) a security issued by a *CoCo fund*; or

(c) a beneficial interest in either of (a) or (b).

(2) A *firm* must not:

(a) *sell* an *investment* to a *retail client* in the *United Kingdom*; or

(b) communicate or approve an invitation or inducement to participate in, acquire or underwrite an *investment* where that invitation or inducement is addressed to or disseminated in such a way that it is likely to be received by a *retail client* in the *United Kingdom*.

(3) The restrictions do not apply if the firm has taken reasonable steps to ensure that one (or more) of the exemptions in ■ COBS 22.3.2R applies.

(4) In this section a *retail client* includes a *person* who would be a *retail client* if he were receiving services from the *firm* in the course of the *firm* carrying on a *regulated activity*.

Exemptions

22.3.2 R

Each of the exemptions listed below applies only if the *retail client* is of the type described for the exemption and provided any additional conditions for the exemption are met.

Title	Type of retail client	Additional conditions
Certified high net worth investor	(a)An individual who meets the requirements set out in COBS 4.12.6R; or (b) a *person* (or *persons*) legally empowered to make investment decisions on	The *firm* must consider that the *investment* is likely to be suitable for that individual, based on a preliminary assessment of that individual's profile and objectives (see COBS 4.12.5G(2)).

Title	Type of retail client	Additional conditions
	behalf of an individual who meets the earnings or net asset requirements in (a) above.	
Certified sophisticated investor	(a)An individual who meets the requirements set out in COBS 4.12.7R; or (b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the *firm's* client.	Not applicable.
Self-certified sophisticated investor	(a)An individual who meets the requirements set out in COBS 4.12.8R; or (b) an individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another *person* who is the *firm's* client.	The *firm* must consider that the *investment* is likely to be suitable for that individual, based on a preliminary assessment of that individual's profile and objectives (see COBS 4.12.5G(2)).
Solicited advice	Any *retail client*.	The restrictions do not apply provided all of the following requirements are met: (a) there is no invitation or inducement to participate in, acquire or underwrite the *investment* other than a *personal recommendation* on the *investment*; (b) the *personal recommendation* is made following a specific request by that *client* for advice on the *investment*; and (c) the *client* has not previously received any

Title	Type of retail client	Additional conditions
		other communication (whether or not a *financial promotion*) from the *firm* or from a *person* connected to the *firm* which is intended to influence the *client* in relation to the *investment*. (See Note 1)
MiFID or equivalent third country business other than *financial promotions*	Any *retail client*.	COBS 22.3.1R(2)(a) does not apply to *MiFID or equivalent third country business* (see COBS 9.3.5G).
Prospectus	Any *retail client*.	The restrictions do not apply to the distribution of a prospectus required under the *Prospectus Regulation*.
Issuers	Any *retail client*	To the extent that the *firm* is acting as issuer of a *contingent convertible instrument*, the restrictions only apply to the original issuance of the *contingent convertible instrument* and not to subsequent trading in the secondary market.
Indirect investment	Any *retail client*	The restrictions do not apply in relation to a beneficial interest in a *contingent convertible instrument* acquired through participation in a *regulated collective investment scheme*, investment in a *non-mainstream pooled investment* (provided it is not a *CoCo fund*), or membership of an *occupational pension scheme*.
Note 1	A *person* is connected with a *firm* if it acts as an *introducer* or *appointed representative* for that *firm* or if it is any other *person*, regardless of *authorisation* status, who has a relevant business relationship with the *firm*.	
Note 2	See COBS 2.4 for rules and guidance on agent as *client* and reliance on others.	

Adaptation of other rules and guidance to contingent convertible instruments and CoCo funds

22.3.3 R

(1) For the purposes of any assessments or certifications required by the exemptions in ■ COBS 22.3.2R, any references in ■ COBS 4.12 provisions to *non-mainstream pooled investments* must be read as though they are references to *contingent convertible instruments* or *CoCo funds*, as relevant.

(2) If the *firm* is relying on the high net worth investor, the sophisticated investor or the *self-certified sophisticated investor* exemption to comply with this section, the statement the investor must sign should have references to *non-mainstream pooled investments* replaced with references to *contingent convertible instruments* or *CoCo funds*, as relevant.

(3) The *firm* must give the *retail client* a written copy of any statements that individual has been asked to sign as part of certification as a high net worth, sophisticated or *self-certified sophisticated investor* for the purposes of compliance with this section.

22.3.4 G

A *firm* wishing to certify a *retail client* as a sophisticated investor for the purposes of this section should note that, in the *FCA*'s view, it is likely that the only *retail clients* with the requisite sophistication in relation to *contingent convertible instruments* or *CoCo funds* are those with significant experience with investment in multiple types of complex *financial instruments* and who have sufficient understanding of how *credit institutions* are run, including risks to the ability of those institutions to meet prudential requirements on an ongoing basis.

Record keeping

22.3.5 R

A *firm* which carries on an activity which is subject to this section must comply with the following record-keeping requirements:

(1) the *person* allocated the *compliance oversight function* in the *firm* must make a record at or near the time of the activity certifying it complies with the restrictions set out in this section;

(2) the making of the record required in (1) may be delegated to one or more *employees* of the *firm* who report to, and are supervised by, the *person* allocated the *compliance oversight function*, provided the process for certification of compliance has been reviewed and approved by the *person* allocated the *compliance oversight function* no more than 12 months before the date of the sale or communication or approval of the invitation or inducement;

(3) when making the record required in (1), the *firm* must make a record of which exemption was relied on for the purposes of the activity within the scope of this section, together with the reason why the *firm* is satisfied that that exemption applies;

(4) where the *firm* relies on the *certified high net worth investor*, the *certified sophisticated investor* or the *self-certified sophisticated investor* exemption, the record in (1) must include a copy of the certificate or investor statement (as signed by the investor) and of the warnings or indications required by the exemption, as applicable;

(5) a *firm* must retain the record required in (1) for five years if it relates to *MiFID* or *equivalent third country business*, and otherwise for three years.

22.3.6 G To the extent the requirements in ■ COBS 22.3.5R apply to the communication or approval of any invitation or inducement, such requirements are in addition to those set out in ■ COBS 4.11.

22.4 Prohibition on the retail marketing, distribution and sale of derivative contracts of a binary or other fixed outcomes nature

Application

22.4.1 R This section applies to:

(1) *MiFID investment firms*, with the exception of *collective portfolio management investment firms*; and

(2) *branches* of *third country investment firms*,

in relation to the marketing, distribution or sale of *investments* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order* in or from the *United Kingdom* to a *retail client*.

22.4.2 G *Firms* are reminded that the *Glossary* definition of *MiFID investment firm* includes *CRD credit institutions* when those institutions are providing an *investment service or activity*.

22.4.2A G *Persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

(1) Part 7 of the *EU Exit Passport Regulations*; or

(2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)

are required to comply with the *rules* in this section as a consequence of:

(3) regulation 59 of the *EU Exit Passport Regulations*; or

(4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

22.4.3 G For the avoidance of doubt, in ■ COBS 22.4.1R, "marketing" includes *communicating* and/or *approving financial promotions*, and "distribution or sale" includes *dealing* in relation to *investments* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order*.

Prohibitions

22.4.4 R

(1) A *firm* must not:

(a) sell an *investment* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order* to a *retail client*; or

(b) distribute an *investment* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order* to a *retail client*; or

(c) market an *investment* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order* if the marketing is addressed to or disseminated in such a way that it is likely to be received by a *retail client*.

(2) "Marketing" includes, but is not limited to, *communicating* and/or *approving financial promotions*.

22.5 Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative investments

Application

22.5.1 R

(1) Subject to ■ COBS 22.5.1AR and ■ COBS 22.5.1BG this section applies to:

(a) *MiFID investment firms* with the exception of *collective portfolio management investment firms*; and

(b) *branches* of *third country investment firms*,

in relation to the marketing, distribution or sale of *restricted speculative investments* in or from the *United Kingdom* to a *retail client*.

(2) [deleted]

22.5.1-A G

Persons (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

(1) Part 7 of the *EU Exit Passport Regulations*; or

(2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)

are required to comply with the *rules* in this section as a consequence of:

(3) regulation 59 of the *EU Exit Passport Regulations*; or

(4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

22.5.1A R

The *rules* in this section do not apply to the sale and distribution of *restricted options* by a *firm* (F) in circumstances where F sells a *restricted option* to a *retail client* through an intermediary.

22.5.1B G

For the avoidance of doubt, the exclusion in ■ COBS 22.5.1AR only applies to F.

22.5.1C R

[deleted]

22.5.2 G

[deleted]

22.5.3 G *Firms* are reminded that the *Glossary* definition of *MiFID investment firm* includes *CRD credit institutions* when those institutions are providing an *investment service or activity*.

22.5.4 G For the avoidance of doubt, "marketing" *restricted speculative investments* includes *communicating* and/or *approving financial promotions*, and "distribution or sale" includes *dealing* in relation to *restricted speculative investments*.

22.5.5 R The *rules* in this section do not apply to:

(1) *derivative* instruments for the transfer of credit risk to which article 85(3) of the *Regulated Activities Order* applies; or

(2) *cryptoasset derivatives*.

22.5.5A G *Firms* are reminded of the prohibitions in relation to the marketing, distribution and sale of *cryptoasset derivatives* in ■ COBS 22.6.

Standardised risk warning

22.5.6 R (1) Subject to ■ COBS 22.5.7R and ■ COBS 22.5.7AR, a *firm* must not:

(a) market, publish, provide or communicate in any other way any communication or information in a *durable medium* or on a webpage or website to a *retail client*, or in such a way that it is likely to be received by a *retail client*;

(b) *approve* or *communicate* a *financial promotion* in a *durable medium* or on a webpage or website; or

(c) disseminate such a communication, information or *financial promotion* to a *retail client*, or in such a way that it is likely to be received by a *retail client*,

unless the *firm* includes one of the following risk warnings, as appropriate.

(1A) Subject to 1B, if a *firm* markets, distributes or sells:

(a) leveraged *contracts for differences*;

(b) leveraged *spread bets*; or

(c) leveraged *rolling spot forex contracts*,

the *firm* must include the following risk warning:

"CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

[insert percentage per provider]% of retail investor accounts lose money when trading CFDs with this provider.

You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money."

If a *firm* markets, distributes or sells:

restricted options; and

one or more of the following:

leveraged *contracts for differences*;

leveraged *spread bets*; or

leveraged *rolling spot forex contracts*,

the *firm* must include the following risk warning:

> "CFDs and restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.
>
> **[insert percentage per provider]% of retail investor accounts lose money when trading CFDs and restricted options with this provider.**
>
> You should consider whether you understand how CFDs and restricted options work and whether you can afford to take the high risk of losing your money."

If a *firm* markets, distributes or sells *restricted options* but does not market, distribute or sell leveraged *contracts for differences*, leveraged *spread bets* or leveraged *rolling spot forex contracts*, the *firm* must include the following risk warning:

> "Restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.
>
> **[insert percentage per provider]% of retail investor accounts lose money when trading restricted options with this provider.**
>
> You should consider whether you understand how restricted options work and whether you can afford to take the high risk of losing your money."

(2) The risk warning must be modified as necessary to refer to the percentage of *retail client* accounts that lost *money* relevant to the *firm*.

(3) The *firm's* disclosure of the percentage of *retail client* accounts that lost *money* must include an up-to-date percentage based on a calculation of the percentage of *retail client* accounts held with the *firm* that lost *money*.

(4) The calculation in (3) must be performed every three *months* and cover the 12-*month* period preceding the date of the calculation.

(5) For the purposes of the calculation in (3), an individual *retail client* account must be considered to have lost *money* if the sum of all realised and unrealised net profits on *restricted speculative investments* traded in that *retail client's* account during the 12-*month* calculation period is below zero.

(6) The calculation in (3) must include all costs, fees, *commissions* and any other charges.

(7) The calculation in (3) must not include:

(a) a *retail client* account that did not have an open *restricted speculative investment* connected to it within the calculation period;

(b) any profits or losses from investments other than *restricted speculative investments*;

(c) any deposits of funds; or

(d) any withdrawals of funds.

(8) The *firm* must retain records of the *retail client accounts* used for these calculations for five years.

(9) Where the *retail client* has not approached the *firm* through a website or mobile application, the risk warning must be provided in a *durable medium* in good time before the *firm* carries on any business for the *retail client*.

(10) Where the communication, information or *financial promotion* referred to in ■ COBS 22.5.6R(1) is in a medium other than a *durable medium*, website or webpage, *firms* must include one of the following risk warnings, as appropriate.

(10A) Subject to 10B, if a *firm* markets, distributes or sells:

(a) leveraged *contracts for differences*;

(b) leveraged *spread bets*; or

(c) leveraged *rolling spot forex contracts*,

the *firm* must include the following risk warning:

> **"[insert percentage per provider]% of retail investor accounts lose money when trading CFDs with this provider.**
>
> You should consider whether you can afford to take the high risk of losing your money."

(10B) If a *firm* markets, distributes or sells:

(a) *restricted* options; and

(b) one or more of the following:

(i) leveraged *contracts for difference*;

(ii) leveraged *spread bets*; or

(iii) leveraged *rolling spot forex contracts*,

the *firm* must include the following risk warning:

> **"[insert percentage per provider]% of retail investor accounts lose money when trading CFDs and restricted options with this provider.**
>
> You should consider whether you can afford to take the high risk of losing your money."

(10C) If a *firm* markets, distributes or sells *restricted speculative options* but does not market, distribute or sell leveraged *contracts for differences*, leveraged *spread bets* or leveraged *rolling spot forex contracts*, the *firm* must include the following risk warning:

> **"[insert percentage per provider]% of retail investor accounts lose money when trading restricted options with this provider.**
>
> You should consider whether you can afford to take the high risk of losing your money."

(11) For the purposes of ■ COBS 22.5.6R(10), if the number of characters contained in that risk warning exceeds the character limit permitted

by a third party marketing provider, the following risk warning must be used:

[insert percentage per provider]% of retail CFD accounts lose money."

(12) Where the risk warning in ■ COBS 22.5.6R(11) is used, the *firm* must ensure that the risk warning is accompanied by a direct link to the *firm's* webpage which contains the risk warning in ■ COBS 22.5.6R.

22.5.7 R

(1) This rule applies when:

(a) a *firm* is required to perform the calculation of percentage of loss for the purposes of the risk warning and the *firm* has not entered into a single trade involving a *restricted speculative investment* with a *retail client* in the previous 12 *months*; and

(b) the *firm's* communication, information or *financial promotion* is provided in a *durable medium*, website or webpage.

(c) [deleted]

The *firm* must use one of the following risk warnings as appropriate for the purposes of ■ COBS 22.5.6R:

(a) If a *firm* markets, distributes or sells:

(i) leveraged *contracts for differences*;

(ii) leveraged *spread bets*; or

(iii) leveraged *rolling spot forex contracts*,

the *firm* must use the following risk warning:

"CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

The vast majority of retail client accounts lose money when trading in CFDs.

You should consider whether you can afford to take the high risk of losing your money."

(b) If a *firm* markets, distributes or sells:

(i) *restricted speculative options*; and

(ii) leveraged *contracts for differences*;

(iii) leveraged *spread bets*; or

(iv) leveraged *rolling spot forex contracts*,

the *firm* must use the following risk warning:

"CFDs and restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.

The vast majority of retail client accounts lose money when trading in CFDs and restricted options.

You should consider whether you can afford to take the high risk of losing your money."

(c) If a *firm* markets, distributes or sells *restricted options* but does not market, distribute or sell leveraged *contracts for differences*, leveraged *spread bets* or leveraged *rolling spot forex contracts*, the *firm* must use the following risk warning:

> "Restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.
>
> **The vast majority of retail client accounts lose money when trading in restricted options.**
>
> You should consider whether you can afford to take the high risk of losing your money."

22.5.7A R

(1) This *rule* applies when:

(a) a *firm* is required to perform the calculation of percentage of loss for the purposes of the risk warning and the *firm* has not entered into a single trade involving a *restricted speculative investment* with a *retail client* in the previous 12 *months*; and

(b) the *firm's* communication, information or *financial promotion* is in a medium other than a *durable medium*, website or webpage.

(2) The *firm* must use one of the following risk warnings as appropriate for the purposes of ■ COBS 22.5.6R:

(a) If a *firm* markets, distributes or sells:

(i) leveraged *contracts for differences*;

(ii) leveraged *spread bets*; or

(iii) or leveraged *rolling spot forex contracts*,

the *firm* must use the following risk warning:

> **"The vast majority of retail client accounts lose money when trading in CFDs.**
>
> You should consider whether you can afford to take the high risk of losing your money."

(b) If a *firm* markets, distributes or sells:

(i) *restricted options*; and

(ii) leveraged *contracts for differences*;

(iii) leveraged *spread bets*; or

(iv) leveraged *rolling spot forex contracts*,

the *firm* must use the following risk warning:

> **"The vast majority of retail client accounts lose money when trading in CFDs and restricted options.**
>
> You should consider whether you can afford to take the high risk of losing your money."

(c) If a *firm* markets, distributes or sells *restricted options* but does not market, distribute or sell leveraged *contracts for differences*, leveraged *spread bets* or leveraged *rolling spot forex contracts*, the *firm* must use the following risk warning:

> **"The vast majority of retail client accounts lose money when trading in restricted options.**
>
> You should consider whether you can afford to take the high risk of losing your money."

(d) Where the number of characters contained in the risk warnings in this *rule* exceeds the character limit permitted by a third party marketing provider, the following risk warning must be used:

"CFD-retail client accounts generally lose money."

22.5.8 R The relevant risk warning in ■ COBS 22.5.6R or ■ COBS 22.5.7R must be:

(1) prominent;

(2) contained within its own border and with bold and unbold text as indicated;

(3) if provided on a website or via a mobile application, statically fixed and visible at the top of the screen even when the *retail client* scrolls up or down the webpage; and

(4) if provided on a website, included on each linked webpage on the website.

22.5.9 G The relevant risk warning, including the font size, should be:

(1) proportionate, taking into account the content, size and orientation of the marketing material as a whole; and

(2) published against a neutral background.

Margin requirements for retail clients

22.5.10 R A *firm* must not open a position in relation to a *restricted speculative investment* for a *retail client* unless the *margin* posted to open the position is in the form of *money*.

22.5.11 R A *firm* must require a *retail client* to post *margin* to open a position of at least the following amounts:

(1) 3.33% of the value of the exposure that the trade provides when the underlying asset is a *major foreign exchange pair* or *relevant sovereign debt*;

(2) 5% of the value of the exposure that the trade provides when the underlying asset is a *major stock market index*, *minor foreign exchange pair* or gold;

(3) 10% of the value of the exposure that the trade provides when the underlying asset is a *minor stock market index* or a *commodity* other than gold; or

(4) [deleted]

(5) 20% of the value of the exposure that the trade provides when the underlying asset is a *share* or an asset not otherwise listed in ■ COBS 22.5.11R(1) to (4) above.

22.5.12 G For the purposes of ■ COBS 22.5.11R, "exposure" means the total value of the exposure that the *restricted speculative investment* provides. Examples are set out below.

(1) A *firm* offers a *restricted speculative investment* when the underlying asset is a 5 x leveraged index on gold. The value of the index is £800.

The value of the exposure that the trade provides is therefore £800 x 5, or £4000; or

(2) a *firm* offers a *contract for differences* where the underlying asset is a *restricted option* that references the FTSE 100. For this *contract for differences*, the value of the exposure that the trade provides is equal to the value of the underlying asset of the *restricted option*. For pricing the *restricted option*, the *firm* offers £1 of exposure for each point of the FTSE 100. Under these terms, if the *retail client* buys the *contract for differences* on a *restricted option* when the FTSE 100 is trading at 7070, the value of the exposure that the trade provides is £7070 (i.e. 7070 x £1).

Margin close out requirements for retail clients

22.5.13 R

(1) A *firm* must ensure a *retail client's* net equity in an account used to trade *restricted speculative investments* does not fall below 50% of the *margin* requirement (as outlined in ■ COBS 22.5.11R) required to maintain the *retail client's* open positions.

(2) Where a *retail client's* net equity falls below 50% of the *margin* requirement, the *firm* must close the *retail client's* open position(s) on restricted speculative investments as soon as market conditions allow.

(3) In this *rule*, "net equity" means the sum of the *retail client's* net profit and loss on their open position(s) and the *retail client's* deposited *margin*.

22.5.14 R

A *firm* must not maintain an open position in relation to a *restricted speculative investment* for a *retail client* unless the *margin* posted to maintain the open position is in the form of *money*.

22.5.15 R

A *firm* must provide to a *retail client* a clear description in a *durable medium* or make available on a website (where that does not constitute a *durable medium*) that meets the *website conditions* of how the *retail client's margin* close out level will be calculated and triggered:

(1) in good time before the *retail client* opens their first position; and

(2) in good time before any change to the terms and conditions applicable to the *retail client* takes effect.

22.5.16 G

Firms are reminded that they must comply with ■ COBS 2.1.1R (the client's best interests rule) and ■ COBS 11.2A.2R (obligation to execute orders on terms most favourable to the client) when:

(1) making a *margin* call to a *retail client*; or

(2) exercising a discretionary right to close a *retail client's* position; or

(3) closing a *retail client's* position(s).

Negative balance protection

22.5.17 R The liability of a *retail client* for all *restricted speculative investments* connected to the *retail client's* account is limited to the funds in that account.

22.5.18 G ■ COBS 22.5.17R means that a *retail client* cannot lose more than the funds specifically dedicated to trading *restricted speculative investments*.

22.5.19 G For the purposes of ■ COBS 22.5.17R, funds in a *retail client's* account are limited to the *cash* in the account and unrealised net profits from open positions. "Unrealised net profits from open positions" means the sum of unrealised gains and losses of all open positions recorded in the account. Any funds or other assets in the *retail client's* account for purposes other than trading *restricted speculative investments* should be disregarded.

Restrictions on monetary incentives and non-monetary incentives

22.5.20 R A *firm* must not offer to a *retail client*, or provide a *retail client* with, any of the following when marketing, distributing or selling a *restricted speculative investment*:

(1) a monetary incentive; or

(2) a non-monetary incentive.

22.5.21 G For the purposes of ■ COBS 22.5.20R:

(1) monetary incentives include, but are not limited to, the offering of bonuses in relation to the opening of a new account or the offering of rebates on fees (including volume-based rebates);

(2) lower fees offered to all *retail clients* do not constitute a monetary incentive; and

(3) information and research tools do not constitute non-monetary incentives.

Other products

22.5.22 G *Firms* that market, distribute or sell *derivatives* with similar features to *restricted speculative investments* (particularly where the *derivatives* are leveraged) to *retail clients*, should have particular regard to how they comply with applicable obligations found elsewhere in the *FCA Handbook*, including, where relevant:

(1) ■ COBS 2.1.1R (The client's best interests rule);

(2) ■ COBS 4.2.1R (The fair, clear and not misleading rule);

(3) ■ COBS 9A (Suitability (MiFID and insurance-based investment products provisions));

(4) ■ COBS 10A (Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions));

(5) *PRIN*, particularly *principles* 1, 2 and 6; and

(6) ■ PROD 3 (Product governance: MiFID).

22.6 Prohibition on the retail marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes

Application

22.6.1 R This section applies to:

(1) *MiFID investment firms*, with the exception of *collective portfolio management investment firms*;

(2) *branches* of *third country investment firms*

(3) *MiFID optional exemption firms*; and

(4) *TP firms* which are *EEA MiFID investment firms* with the exception of *collective portfolio management investment firms*,

in relation to the marketing, distribution or sale of *cryptoasset derivatives* and *cryptoasset exchange traded notes* in or from the *United Kingdom* to a *retail client*.

22.6.2 G In addition to the *persons* listed above, *persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

(1) Part 7 of the *EU Exit Passport Regulations*; or

(2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)

are required to comply with the *rules* in this section as a consequence of:

(3) regulation 59 of the *EU Exit Passport Regulations*; or

(4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

22.6.3 G *Firms* and *TP firms* are reminded that the *Glossary* definition of *MiFID investment firm* includes *CRD credit institutions* when those institutions are providing an *investment service or activity*.

22.6.4 G For the avoidance of doubt, in ■ COBS 22.6.1R, "marketing" includes *communicating* and/or *approving financial promotions*, and "distribution or sale" includes *dealing* in relation to *cryptoasset derivatives* and *cryptoasset exchange traded notes*.

Prohibitions

22.6.5 R

(1) A *firm* or *TP firm* must not:

(a) sell a *cryptoasset derivative* or a *cryptoasset exchange traded note* to a *retail client*; or

(b) distribute a *cryptoasset derivative* or a *cryptoasset exchange traded note* to a *retail client*; or

(c) market a *cryptoasset derivative* or a *cryptoasset exchange traded note* if the marketing is addressed to or disseminated in such a way that it is likely to be received by a *retail client*.

(2) "Marketing" includes, but is not limited to, *communicating* and/or *approving financial promotions*.

Conduct of Business Sourcebook

COBS TP 1
Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
			Overview of transitional provisions for client categorisation		
1.1	COBS 3	G	(1) *COBS* TP 1.2 contains default transitional categorisation provisions in relation to the existing *clients* of a *firm* on 1 November 2007. In many cases, they allow a *client* to be automatically provided with the nearest equivalent categorisation under COBS 3 to their previous categorisation. (2) *COBS* TP 1.3 explains how the transitional provisions for *client* categorisation relate to the requirement for a *firm* to act if it becomes aware that an *elective professional client* no longer satisfies the initial conditions for its categorisation. (3) The default provisions do not prevent a *firm* categorising such a *client* differently in accordance with COBS 3. *COBS* TP 1.4 provides guidance on how some of the procedural requirements in COBS 3 apply in some such cases. (4) *COBS* TP 1.5 contains transitional notification obligations, which apply if the default provisions do not allow that *client* to be provided with the nearest equivalent categorisation or a *firm* chooses not to take advantage of those provisions in relation to a *client*. (5) *COBS* TP 1.6 contains a transitional notification obligation that applies to a *firm* that, in relation to *MiFID or equivalent third country business*, takes advantage of the default transitional categorisation provisions to classify a *client* as a *per se professional client*. (6) *COBS* TP 1.9 contains transitional categorisation provisions in relation to *clients* of a *firm* that are taken on between 1 November 2007 and 30 June 2008 in relation to business that is not *MiFID or equivalent third country business*.	From 1 November 2007 indefinitely	1 November 2007

(1)	(2)	(3)	(4)	(5)	(6)
			Categorisation of existing clients		
1.2	COBS 3	R	(1) An existing *client* that was correctly categorised as a *private customer* immediately before 1 November 2007 is a *retail client* unless and to the extent it is given a different categorisation by the *firm* under COBS 3. (2) An existing *client* that was correctly categorised as an *intermediate customer* immediately before 1 November 2007: (a) is an *elective professional client* if it was an expert *private customer* that had been re-classified as an *intermediate customer* on the basis of its experience and understanding; or (b) is otherwise a *per se professional client*; unless and to the extent it is given a different categorisation by the *firm* under COBS 3. (3) An existing *client* that was correctly categorised as a *market counterparty* immediately before 1 November 2007 is: (a) for *eligible counterparty business* that is not *MiFID or equivalent third country business*, an *eligible counterparty*; and (b) otherwise, a *per se professional client*; unless and to the extent it is given a different categorisation by the *firm* under COBS 3. [**Note:** Article 71(6) of, and third paragraph of section II.2 of Annex II to, Directive 2004/39/EC of the European Parliament and of the Council]	From 1 November 2007 to 2 January 2018	1 November 2007
1.3	COBS 3	G	Under COBS 3.5.9 R, if a *firm* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as an *elective professional client*, the *investment firm* must take the appropriate action. In the case of a *client* that has been classified as an *elective professional client* under *COBS* TP 1.2R(2)(a), the initial conditions are those that applied to the *client's* initial categorisation as an *intermediate customer*.	From 1 November 2007 to 2 January 2018	1 November 2007
			Former inter-professional business		
1.4	COBS 3	G	The requirement to provide notices under COBS 3.3.1 R only applies in relation to new *clients*. The requirement to obtain confirmation under COBS 3.6.4 R (2) only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent	From 1 November 2007 to 2 January 2018	1 November 2007

(1)	(2)	(3)	(4)	(5)	(6)
			that an existing *client* with whom a *firm* conducted *inter-professional business* before 1 November 2007 is categorised as an *eligible counterparty* under COBS 3 in relation to *eligible counterparty business*.		
			Transitional notification obligations		
1.5	COBS 3	R	(1) If a *firm* does not categorise a *client* that was a *private customer* immediately before 1 November 2007 as a *retail client*, it must notify that *client* of its categorisation as a *professional client* or *eligible counterparty*, as appropriate, on or before that date, or if later, before conducting any further business to which *COBS* applies for that *client*.	From 1 November 2007 to 2 January 2018	1 November 2007
			(2) If a *firm* does not categorise a *client* that was an *intermediate customer* immediately before 1 November 2007 as a *professional client*, it must notify that *client* of its categorisation as a *retail client* or *eligible counterparty*, as appropriate, on or before that date, or if later, before conducting any further business to which *COBS* applies for that *client*.		
			(3) If a *firm* does not categorise a *client* that was a *market counterparty* immediately before 1 November 2007 as an *eligible counterparty*, it must notify that *client* of its categorisation as a *retail client* or *professional client* on or before that date, or if later, before conducting any further business to which *COBS* applies for that *client*.		
			[**Note:** article 28(1) of the *MiFID implementing Directive*]		
1.6	COBS 3	R	If a *firm*, in relation to *MiFID or equivalent third country business*, categorises a *client* who would not otherwise have been a *professional client* as a *professional client* under *COBS* TP 1.2(2)(b) or (3)(b), it must inform that *client* about the relevant conditions for the categorisation of *clients*. This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which *COBS* applies for that *client*.	From 1 November 2007 to 2 January 2018	1 November 2007
			[**Note:** article 71(6) of Directive 2004/39/EC of the European Parliament and of the Council]		

(1)	(2)	(3)	(4)	(5)	(6)
1.7		G	A notice to a *professional client* under *COBS* TP 1.6 should inform that *client*: (a)that they have been categorised as a *professional client*; and (b) of the main differences between the treatment of a *retail client* and a *professional client*.	From 1 November 2007 to 2 January 2018	1 November 2007
1.8		R	The record-keeping requirements under COBS 3.8.2 R apply in relation to any *client* categorisations or re-categorisations made under the transitional provisions for COBS 3. Categorisation of new clients before 30 June (business that is not MiFID or equivalent third country business)	From 1 November 2007 indefinitely	1 November 2007
1.9	COBS 3	R	Expired		

Conduct of Business Sourcebook

COBS TP 2
Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.-2	*COBS*, with the exception of COBS 15	R	Expired		
2.-2A	COBS 2.5.1R(1) to (3)	R	A *firm* need not comply with COBS 2.5.1R(1) to (3) in relation to an automatic renewal of an agreement for an optional additional product which was entered into on or before 31 March 2016 provided: (1) the automatic renewal of the agreement is on substantially the same terms. The phrase "on substantially the same terms" is to be interpreted in the same way as in COBS 2.5.1 (1) (b) and (c); (2) on the occasion of the first automatic renewal on or after 1 April 2016, the *firm* takes reasonable steps to ensure that the *client* is informed: (a) that the renewal of the agreement is optional; (b) that the *client* may elect not to renew the agreement; and (c) of the effect of the non-renewal of the agreement, if any, on the *designated investment*; and (3) the procedure to be used by *clients* for electing not to renew the agreement pays due regard to the interests of *clients* and treats them fairly.	From 1 April 2016	On 1 April 2016
2.-2B	COBS 2.3A	R	The *rules* and *guidance* on inducements in COBS 2.3A:	From 3 January 2018	3 January 2018 (and in relation to an *insurance-based*

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
					investment product, 1 October 2018)
			(1) apply to fees, commission, monetary and non-monetary benefits which are paid, provided or received by a *firm* in respect of: (a) (unless (b) applies) services that are provided to a *client* on or after 3 January 2018; (b) (in relation to an *insurance-based investment product*) services that are provided to a *client* on or after 1 October 2018; and (2) do not apply to fees, commission, monetary or non-monetary benefits which are paid, provided or received in respect of: (a) (unless (b) applies) services that are provided to a *client* before 3 January 2018; (b) (in relation to an *insurance-based investment product*) services that are provided to a *client* on or after 1 October 2018		
2.-1	COBS 4	R	Expired		
2.-1A	COBS 4.7.7 R to COBS 4.7.10 R	R	Expired		
2.-1B	COBS 4.5.12R to 4.5.15R	R	The *rules* specified in column (2) apply: (1) from 7 May 2019 in respect of any *authorised fund* which is authorised on or after that date; and (2) from 7 August 2019 in respect of any *authorised fund* which is authorised before 7 May 2019.	From 7 May 2019 to 7 August 2019	7 May 2019
2.1	COBS 6.1	G	(1) If a *firm* provides services of an ongoing nature to an existing *client* it need not provide information to that *client* that it would be required to provide under *COBS* to a new *client* but which it was not required to provide under *COB*.	From 1 November 2007 indefinitely	1 November 2007

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
			(2) Services of an ongoing nature include *safekeeping and administration investments* and *managing investments*,		
2.2	COBS 6.1	G	(1) If a *firm* provides a service for an existing *client* that is not of an ongoing nature and which relates to the same particular type of *designated investment* as a previous service, the *firm* need not provide information to that *client* that it would be required to provide under COBS 6.1 to a new *client* but which it was not required to provide under *COB*. (2) But a *firm* should ensure that the *client* has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those described in respect of a previous transaction.	From 1 November 2007 indefinitely	1 November 2007
2.-2B	COBS 9.4.11R(2)(e) and COBS 9.4.11R(6)(c)	R	In relation to a particular *client*, a *firm* need not comply with the requirements in *rules* in column (2) relating to charges in any *default arrangement* in any available *qualifying scheme*, where the *firm's* work for the *client* on advice on *pension transfer* or *pension conversion* commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020
2.-2A	COBS 9.4.12G(3) and COBS 9.4.12G(4)	G	In relation to a particular *client*, a *firm* need not consider the *guidance* in column (2) to the extent that it relates to the charges in any *default arrangement* in any available *qualifying scheme*, where the *firm's* work for the *client* on advice on *pension transfer* or *pension conversion* commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020
[deleted]					
2.2A	COBS 6.1E	R	[expired]		
2.2AA	COBS 6.1E	G	[expired]		
2.2AB	COBS 6.1E	G	[expired]		
2.2AC	COBS 6.1E	G	[expired]		
[deleted]					
2.2B	COBS 6.3	R	Expired		
2.2C	COBS 6.3	G	Expired		
2.2D	COBS 6.3	R	Expired		
2.2E	COBS 6.3.7 G	R	Expired		

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.2EA	COBS 19.1.2BR (3) and COBS 19.1.2BR(4)	R	In relation to a particular *client*, the *rules* in column (2) do not apply in relation to the *default arrangement* of the *qualifying scheme* where a *firm's* work for the *client* on advice on *pension transfer* or *pension conversion* commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.2EB	COBS 19.1.6(7) to COBS 19.1.6(11)	G	In relation to a particular *client*, a *firm* need not consider the *guidance* in column (2) where the *firm's* work for the *client* on advice on *pension transfer* or *pension conversion* commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020
2.3	COBS 10.1.2 R	R	Expired		
2.4	COBS 10.1.2 R	G	Expired		
2.4-A	COBS 10.1.2 R	R	Expired		
2.4A	COBS 11.2	R	Expired		
2.4B	COBS 11.2	G	Expired		
2.4C	COBS 11.2	R	Expired		
2.4D	COBS 11.2	R	Expired		
2.4E	COBS 12.2 and COBS 12.3	R	Expired		
2.4F	COBS 12.2 and COBS 12.3	G	Expired		
2.4G	COBS 12.2 and COBS 12.3	R	Expired		
2.5	COBS 13	R	Expired		
2.5-A	COBS 13.4.1 R	R	Expired		
2.5A	COBS 13.4.2 R	R	Expired		
2.5AA	COBS 13.5.1 R	R	Expired		
2.5AB	COBS 13.5.2 R	R	Expired		
2.5-B	COBS 13 Annex 2	R	Expired		
2.5B	COBS 13 Annex 2 2.3	R	Expired		
2.5C	COBS 13 Annex 2 2.4	R	Expired		
2.5D	COBS 13 Annex 3	R	Expired		
2.5E	COBS 13 Annex 4	R	Expired		
2.6	COBS 14.1 and COBS 14.2	R	Expired		
2.6A	COBS 14.2 and COBS 14.3		Expired		
	Expired				
2.7	COBS 15	R	Expired		

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.8	COBS 16.3 (Periodic statements)	G	This transitional *rule* applies in relation to a periodic reporting period for a *periodic statement* that includes 1 November 2007. A *firm* may choose to comply with either COBS 16.3 or COB 8.2 in providing any *periodic statement* in relation to which this *rule* applies.	From 1 November 2007 indefinitely	1 November 2007
2.8A	COBS 18	R	Expired		
2.8B	COBS 18	G	Expired		
2.8C	COBS 18	R	Expired		
2.8D	COBS 18	G	[deleted]		
2.8E	COBS 18	R	Expired		
2.8F	COBS 19.4.3 R	R	[expired]		
2.8F-B	COBS 19.1B.3R, COBS 19.1B.4R, and COBS 19.1B.5R.	R	The *rules* in column (2) do not apply in relation to a *firm's adviser charges*, *employer or trustee funded pension advice charge*, or *remuneration* incurred in respect of work that is commenced prior to 1 October 2020 and is completed before 1 January 2021 where: (1) a *firm* agreed in writing to be engaged by a *retail client* before 1 October 2020; or (2) (in the case of an *employer or trustee funded pension advice charge*) a *firm* agreed in writing to be engaged by the employer or the trustee before 1 October 2020; and (3) (in either case) the *firm* agreed in writing to provide *full pension transfer or conversion advice* on a contingent basis.	1 October 2020 to 31 December 2020	1 October 2020
2.8F-A	COBS 19.Annex 4AR(5)	R	In relation to a particular *client*, the *rule* in column (2) does not apply where a *firm's* work for the *client* on advice on *pension transfer* or *pension conversion* commenced prior to 1 October 2020 and is completed before 1 January 2021.	1 October 2020 to 31 December 2020	1 October 2020
2.8FA	COBS 19.9.6AR(4)	R	(1) The *rule* in column (2) does not apply to a *firm* until 1 January 2020 and is replaced by TP 2.8FAR(2), the *guidance* in TP 2.8FB and the *guidance* in TP 2.8FC below. (2) Where a *retail client* refuses to answer questions that would allow a *firm* to determine whether a *pension annuity* on an enhanced basis could be available, a *firm* must: (a)include information warning the *retail client* that: (i)a higher annual income might be obtained; or	1 November 2019 to 31 December 2019	1 November 2019

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
			(ii)at least the requested annual income might be obtained for a lower purchase price; by searching the open market for a *pension annuity*; and (b)as applicable, use the template in Part 3 or Part 6 of COBS 19 Annex 3R, unless the *firm* obtains a market leading *pension annuity* in line with the *guidance* below in TP 2.8FC.		
2.8FB	COBS 19.9.6AR(4)	G	A *firm* in TP 2.8FAR(2) may consider it appropriate to include in the quote provided to the *retail client* a statement that the *client* may have health or lifestyle factors that could mean that they are eligible for a higher income. For example, the wording in the "Did you know?" box in the template in Part 3 or Part 6 of COBS 19 Annex 3R could be adapted to reflect the fact that a *client* has refused to answer questions about their health or lifestyle.	1 November 2019 to 31 December 2019	1 November 2019
2.8FC	COBS 19.9.6AR(4)	G	Where a *retail client* refuses to answer a *firm's* questions to allow the *firm* to determine whether the *retail client* is eligible for an enhanced annuity, the *firm* is encouraged to generate a market leading *pension annuity* quote using the same information that it used to generate its guaranteed quote and compare the two.	1 November 2019 to 31 December 2019	1 November 2019
2.8G	COBS 19.10.30R(2)(b) and 19.10.34R	R	An *operator* of a *personal pension scheme* or *stakeholder pension scheme* must, within 6 *months* of 1 February 2021, identify which of its non-advised *retail clients* have more than 50% of their drawdown fund invested in cash-like investments (subject to COBS 19.10.32R) and provide those *retail clients* with a cash warning.	26 February 2021 to 1 August 2021	1 February 2021
2.8H	COBS 19.10.43R	R	An *operator* of a *personal pension scheme* or *stakeholder pension scheme* must, within 6 *months* of 1 February 2021, identify which of its *retail clients* have value remaining in an expired fixed term product, such that COBS 19.10.43R applies, and provide those *retail clients* with warnings as set out in that *rule*.	26 February 2021 to 1 August 2021	1 February 2021
2.8I	COBS 19.10.47G(13)	G	A *firm* to which TP 2.8GR applies should maintain a record of the number of *retail clients* provided with a cash warning in accordance with COBS TP 2.8GR.	26 February 2021 to 1 August 2021	1 February 2021

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.8J	COBS 19.10.47G(17) and (18)	G	A *firm* to which TP 2.8HR applies should maintain a record of the number of *retail clients* provided with a warning in accordance with COBS TP 2.8HR.	26 February 2021 to 1 August 2021	1 February 2021
2.9	COBS 20.2.1 G to COBS 20.2.23 R; COBS 20.2.26 R to COBS 20.2.41 G	R	The provisions listed in column (2) do not apply to a *firm* if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the *appropriate regulator*, a *previous regulator* or a court of competent jurisdiction, on or before 20 January 2005.	From 1 November 2007 indefinitely	1 November 2007
2.9A	COBS 20.2.24 R to COBS 20.2.25A R (Charging payments of compensation and redress to a with-profits fund)	R	The provisions listed in column (2) do not apply to a *firm* if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the *appropriate regulator*, a *previous regulator* or a court of competent jurisdiction, on or before 31 July 2009.	From 31 July 2009 indefinitely	31 July 2009
2.10	COBS 20.2.42R (3) (Policyholder advocate: appointment and role)	R	Expired		
2.11	*COBS* TP 2.9	G	The *rules* and *guidance* on treating with-profits policyholders fairly (COBS 20.2.1 G – COBS 20.2.41 G;) may be contrary to, or inconsistent with, some arrangements that were formally approved by the *appropriate regulator*, a *previous regulator* or a court of competent jurisdiction, on or before 20 January 2005. The effect of TP 2.9 is that these *rules* do not apply to such arrangements if, and to the extent that, it is inconsistent with them. A *firm* should be mindful, however, that, even if some or all of these *rules* are disapplied, the *firm* is still subject to the *rules* in the rest of the *Handbook*, including *Principle* 6.	From 1 November 2007 indefinitely	1 November 2007
2.12	*COBS*	R	[deleted]		
2.13	*COBS*	R	[deleted]		
2.14	COBS 20.2.24 R to COBS 20.2.25A R	R	(1) COBS 20.2.24 R to COBS 20.2.25A R have effect in relation to payments of compensation and redress arising out of events occurring on or after 31 July 2009. (2) For payments of compensation and redress arising out of events occurring before 31 July	From 31 July 2009 indefinitely	31 July 2009

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
			2009, COBS 20.2.23 R to COBS 20.2.25 R apply as they were in force on 30 July 2009.		
	[deleted]		[deleted]	[deleted]	
2.16	COBS 9.4.10 G; COBS 13 Annex 2; COBS 13 Annex 3; COBS 14.2.1 R	R	Expired		
2.17	COBS 9.4.10 G; COBS 13 Annex 2; COBS 13 Annex 3; COBS 14.2.1 R	G	Expired		
2.18	COBS 20.2.53 R to COBS 20.2.60 G, SUP App 2.15G	R	(1) Unless (2) applies, and subject to (3), a *firm* that has ceased to effect new *contracts of insurance* in a *with-profits fund* must submit to the *FCA* a run-off plan of the type described in COBS 20.2.53R (2); COBS 20.2.56 R, and COBS 20.2.57 G, if it has not done so already, by 31 December 2012, regardless of when it closed to new business. (2) Paragraph (1) does not apply to a *firm* if, and to the extent that, to comply would be contrary to or inconsistent with an arrangement that was formally approved by a court of competent jurisdiction, on or before 1 April 2012. (3) A *firm* required by (1) above to produce a run-off plan: (a) should consider the guidance in SUP App 2.15.6 G, 2.15.7G (11), 2.15.13 G, 2.15.14 G and 2.15.15 G to continue to apply to it, as appropriate; (b) may demonstrate compliance with the guidance in SUP App 2.15.2 G, 2.15.3 G, 2.15.4 G and 2.15.5 G by reference to existing documents created by or for the *firm*, provided that it submits copies of relevant extracts to the *FCA*; (c) may disregard the remaining provisions in SUP App 2.15G if to do so would be consistent with meeting the requirements of COBS 20.2.56R (1); and (d) may otherwise tailor the run-off plan to reflect the fact that the fund in question has already been closed.	From 1 April 2012 indefinitely	1 November 2007 and 1 April 2012

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.19	COBS 20.2.53 R to COBS 20.2.60 G	G	The effect of *COBS* TP 2.18 is that *firms* which were not required to submit a run-off plan to the *FCA* because they ceased to effect new *contracts of insurance* before 1 November 2007 or because of previous transitional provisions in *COBS*, will need to submit a version of a run-off plan to the *FCA*, taking into account the fact that the fund has already closed, by 31 December 2012. However, this will not apply to the extent that it would be inconsistent with a formally approved court scheme.	From 1 April 2012 indefinitely	1 November 2007 and 1 April 2012
2.20	COBS 20.2.28 R	R	Expired		
2.21	COBS 20.2.36 R to COBS 20.2.36A R	R	Expired		
2.22	COBS 20.5.1 R to COBS 20.5.5 R	R	Expired		
2.23	The changes to *COBS* set out in Annex K of the Alternative Investment Fund Managers Directive Instrument 2013	R	Expired		
2.24	COBS 13 Annex 2		A *firm* will comply with the provisions listed in column (2) if it chooses to comply with the following amendments made to those provisions by the Conduct of Business (Pension Supplementary Rules) Instrument 2016 as if those amendments were already in force: COBS 13 Annex 2 2.4R (3); COBS 13 Annex 2 3.3R; COBS 13 Annex 2 3.4G; COBS 13 Annex 2 5.1R(2)(g)	25 April 2016 to 5 April 2017	6 April 2017
2.25	COBS 19.6A.5R	R	COBS 19.6A.5R does not apply where the instruction for the action giving rise to the *early exit charge* was received by the *firm* before 31 March 2017.	From 31 March 2017 indefinitely	31 March 2017
2.26	COBS 17.1.7R	R	An *insurer* need not comply with COBS 17.1.7R for contracts entered into or variations agreed before 1 August 2017.	From 1 August 2017	On 1 August 2017

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.27	The *rules* and *guidance* in *COBS* that relate to a *NURS-KII document*	R	Where the *authorised fund manager* of a *non-UCITS retail scheme*, or an *ICVC* that is a *non-UCITS retail scheme*, complies with the *rules* and *guidance* in *COLL* that relate to a *NURS-KII document*, in accordance with COLL TP 1.1.46R, by using a *key investor information document* (as modified by a general direction from the *FCA*), the *rules* and *guidance* in column (2) apply in relation to that *document* as if a reference to a "*NURS-KII document*" were a reference to that *document*.	From 1 January 2018 until 19 February 2018	1 January 2018
2.28	COBS TP 2.27R	G	The effect of COBS TP 2.27R is that where a modified form of a *key investor information document* has been produced for a *non-UCITS retail scheme* prior to 1 January 2018, *firms* may continue to use that *document* for a short period until the *AFM* of the *KII-compliant NURS* has had time to produce a replacement *NURS-KII document* that complies with COLL Appendix 2R.	From 1 January 2018 until 19 February 2018	1 January 2018
2.29	COBS 19.1.2R to COBS 19.1.4BR		A *firm* will comply with the provisions in column (2) if it chooses to comply with the following amendments made by Part 2 of the Conduct of Business Sourcebook (Pension Transfers) Instrument 2018 as if those amendments were already in force: COBS 19.1.1-A; COBS 19.1.2BR; COBS 19.1.2CR; COBS 19.1.2DG; COBS 19.1.2EG; COBS 19.1.3AR; COBS 19.1.3BG; COBS 19 Annex 4A; COBS 19 Annex 4B; COBS 19 Annex 4C; COBS 19 Annex 5. If a *firm* does so, the reference to "comparison" in COBS 19.1.7BG must be read as a reference to "appropriate pension transfer analysis".	1 April 2018 to 30 September 2018	1 October 2018
2.29A	COBS 19.5.5R(8) and 19.5.13R(1)	R	(1) The requirement to publish administration charges and transactions costs information does not apply in respect of the year 1 January to 31 December 2019. Accordingly, the first publication of administration charges and transactions costs information must be completed by 31 July 2021, in respect of the year 1 January to 31 December 2020. (2) In respect of the year 1 January to 31 December 2020, the requirement to publish administration charges and transactions costs information applies to default arrangements only.	1 April 2020 to 31 July 2021	1 April 2020
2.29B	COBS 19.5.5R(6)(g) and 19.5.16R	R	The requirement to set out administration charges and transactions costs information only applies in respect of the annual report for the year 1 January to 31 December 2020 and future years.	1 April 2020 to 31 July 2021	1 April 2020

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.29C	COBS 19.5.5R(7)	R	The requirement to ensure the production of the annual report by 31 July each year, in respect of the previous calendar year, only applies in respect of the year 1 January to 31 December 2020 and future years.	1 April 2020 to 31 July 2021	1 April 2020
2.29D	COBS 19.5.5R(7)	G	The effect of COBS 19.5.5R(7) and TP 2.29CR is that, in respect of the year 2020 onwards, the annual report must align with the calendar year.	1 April 2020 to 31 July 2021	1 April 2020
2.29E	COBS 19.5.16R(2)	R	In respect of the year 1 January to 31 December 2020 only, the annual report need not explain how a *relevant scheme* member can access the costs and charges information for each alternative fund option that a member is able to select. This is because the publication of such information is not required in respect of that year, due to TP 2.29AR(2).	1 April 2020 to 31 July 2021	1 April 2020
2.29F	COBS 19.5.5R(9) and 19.5.17R	G	*IGCs* do not need to ensure that members of *relevant schemes* are provided with the annual communication required by COBS 19.5.5R(9) until after the first publication of administration charges and transaction costs information. As a result of TP 2.29AR, the first annual communication will be in respect of the information published for the year 1 January to 31 December 2020.	1 April 2020 to 31 December 2021	1 April 2020
2.30	COBS TP 2.31	G	The purpose of the transitional provision in COBS TP 2.31 is to treat the specified *Glossary* definitions (and the relevant provisions referred to within these definitions) of the Conduct of Business Sourcebook (Investment Pathways) Instrument 2019 coming into force on 1 February 2021 as in force to enable a *firm* and its *IGCs* to comply with the requirements of COBS 19.5 and the guidance in SYSC 3.2 and SYSC 4.1.	From 6 April 2020 to 31 January 2021	6 April 2020
2.31	COBS 19.5	R	The following *Glossary* definitions (and the relevant provisions referred to within these definitions) have the same meaning as in Annex A of the Conduct of Business Sourcebook (Investment Pathways) Instrument 2019 coming into force on 1 February 2021: (1)*capped drawdown pension fund*; (2)*flexi-access drawdown pension fund*; (3)*manufacture*; and (4)*pathway investment*.	From 6 April 2020 to 31 January 2021	6 April 2020

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
2.32	COBS 19.5.5R(2A)(c)	R	The *rule* in column (2) does not apply until 1 August 2020 and is replaced by the *guidance* in COBS TP 2.33.	From 6 April 2020 to 31 July 2020	6 April 2020
2.33	COBS 19.5.5R(2A)(c)	G	From 6 April 2020 to 31 July 2020, an *IGC* may consider it appropriate to consider the *firm's* processes and procedures, and any related service legal agreements, regarding the processing of core financial transactions, as part of its assessment of value for money.	From 6 April 2020 to 31 July 2020	6 April 2020
2.34	COBS 19.5.5R(6)	R	In relation to the matters in COBS 19.5.5R(2A) to (2D), where the first annual report produced by the Chair of an *IGC* from 6 April 2020 relates to a year: (1)that ends before 6 April 2020, the *rule* in column (2) does not apply; or (2)that starts before (but ends after) 6 April 2020, the *IGC* is not required to comply with the *rule* in column (2) to the extent the *IGC* does not have sufficient information to produce a substantive report. In such cases where there is insufficient information to produce a substantive report, the Chair of the *IGC* must include a statement in the annual report to that effect.	From 6 April 2020 to 31 December 2020	6 April 2020
2.35	COBS 19.5.5R(6)(aa)	R	The *rule* in column (2) does not apply until 6 April 2021 and is replaced by the *guidance* in COBS TP 2.36 below.	From 6 April 2020 to 5 April 2021	6 April 2020
2.36	COBS 19.5.5R(6)(aa)	G	Where an annual report produced by the Chair of an *IGC* after 6 April 2020 relates to a year that ends before 6 April 2021, an *IGC* may consider it appropriate to report on the extent to which the *firm* has implemented its stated policies in relation to the matters in COBS 19.5.5R(2B) to (2D).	From 6 April 2020 to 5 April 2021	
2.37	*COBS* chapters 9, 13 and 19	R	A *firm* may choose to comply with *COBS* chapters 9, 13 and 19 as if the changes to it made by the Money and Pensions Service (Consequential Amendments) Instrument 2021 had not been made.	26 November 2021 to 25 November 2022	26 November 2021

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Schedule 1
Record keeping requirements

Sch 1

Sch 1.1 G

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

Sch 1.2 G

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.2A G

(1) A *MiFID investment firm*, *third country investment firm* or *MiFID optional exemption firm* should refer to the requirements on record keeping in the *MiFID Org Regulation* and ■ SYSC 9. In particular, Annex I to the *MiFID Org Regulation* contains a minimum list of records to be kept by those *firms* to which it applies.

[**Note:** article 72 of the *MiFID Org Regulation*]

(2) An *insurance distributor* should refer to the requirements on record keeping in the *IDD Regulation* and in ■ SYSC 3 (for *insurers* and *managing agents*) or ■ SYSC 9 (for other *firms*).

[**Note:** article 19 of the *IDD Regulation*]

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 2.3.17R (1)	Information disclosed to the *client* in accordance with COBS 2.3.1R (2)(b)	The information disclosed	When information is disclosed	5 years from date information is given
COBS 2.3.17R (2)	Each benefit given to another *firm* which does not have to be disclosed to the *client* in accordance with COBS 2.3.1R (2)(b)(ii)	Each benefit given	When benefit is given	5 years from date of benefit

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 2.3A.19R (5)(f)(iv)	Trial periods of research received in accordance with COBS 2.3A.19R (5)(f).	Dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in COBS 2.3A.19R(5)(f)(i) to (iii).	When the trial period is received	
COBS 2.3A.32R	Evidence that any fees, commissions and non-monetary benefits paid or received are designed to enhance the quality of the relevant service to the *client*	(1) List of all fees, commissions and non-monetary benefits received; and (2) record of how any fees, commissions or non-monetary benefits enhance the quality of the services provided and the steps taken in order not to impair compliance with the duty to act honestly, fairly and professionally in the best interests of the *client*	When the relevant fee, commission or non-monetary benefit is paid or received	Not specified
COBS 2.3B.11R	Audit trail in relation to the operation of any *research* payment accounts	(1) Payments made to *research* providers; and (2) how the amounts paid were determined	When a payment for *research* is made	Not specified
COBS 2.3B.20R	Summary details in relation to the operation of a *research* payment account	A summary of: (1) the providers paid from the account; (2) the total amount paid over a defined period; (3) the benefits and services received; and (4) how the total amount spent compares to the budget	From when the *research* payment account is established	Not specified

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 3.8.2 R (1)	Standard form notice to *clients* and agreements under COBS 3	Each standard form notice and agreement	When standard form is first used	Relevant period from when the *firm* ceases to carry on business with clients under that standard form (see COBS 3.8.2 R (3))
COBS 3.8.2 R (2)	*Client* categorisation	*Client* categorisation and supporting information, evidence of dispatch to client of any notice (the notice itself where this differs from standard form) and a copy of any agreement entered into	From time of categorisation	Relevant period from when the *firm* ceases to carry on business with or for that client (see COBS 3.8.2 R (3))
COBS 4.11.1R (1)	*Financial promotion*	A *financial promotion communicated* or *approved* (subject to exemptions)	When *communicated* or *approved*	See COBS 4.11.1R (3)
COBS 4.11.1R (2)	Telemarketing scripts	Copy of any script used	Date script used	See COBS 4.11.1R (3)
COBS 4.11.1R (2A)	*Non-mainstream pooled investments*: certification of compliance	(1)Certification by the *person* allocated the *compliance oversight function* or *employees* of the *firm* reporting to and supervised by that *person* confirming that the *financial promotion* is compliant with the restrictions in section 238 of the *Act* and COBS 4.12.3 R, as applicable. (2)Which exemption applies and the reason why that exemption applies. Where the exemption requires a certificate, investor statement,	(1) Date of certification (2) Date the invitation or inducement is communicated or approved	

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		warning or indication, a copy of that certificate, investment statement, warning or indication.		
COBS 4.11.2 G	Compliance of *financial promotions*	*Firms* encouraged to consider recording why a *financial promotion* is considered compliant.	Date of assessment of compliance	
COBS 6.1A.5AR (2)(e)(vi)(D)	Trial periods of research received in accordance with COBS 6.1A.5AR(2)(e)(vi)	Dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in COBS 6.1A.5AR(2)(e)(vi)(A) to (C)	When the trial period is received	
COBS 6.1A.27 R	Adviser charging and remuneration	(1) the *firm's* charging structure; (2) the total adviser charge payable by each retail client; (3) if the total *adviser charge* paid by a *retail client* has varied materially from the charge indicated for that service in the *firm's* charging structure, the reasons for that difference.	(1) when the charging structure is first used; (2) from the date of disclosure; (3) from the date of disclosure;	See COBS 6.1A.27R (1) to (3)
COBS 6.1C.21 R	Consultancy charging and remuneration	(1) the firm's charging structure; (2) the total *consultancy charge* payable by each employer. (3) if the total *consultancy charge* for a particular service has varied materially from that indicated	(1) when the charging structure is first used; (2) from the date of disclosure;	See COBS 6.1C.21 R

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		in the *firm's* charging structure, the reasons for that difference.		
COBS 8.1.4 R	Client agreements (non-MiFID provisions)	Documents setting out rights and obligations of the *firm* and the *client*	From date of agreement	At least the duration of the relationship with the *client* unless the record relates to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC* in which case it must be retained indefinitely
COBS 8A.1.9R	Client agreements (MiFID provisions)	Documents setting out rights and obligations of the *firm* and the *client*	From date of agreement	At least the duration of the relationship with the *client*
COBS 9.2.9 R	Recommendations on *friendly society life policies*.	Why the recommendation is considered suitable	Date of recommendation.	5 years.
COBS 9.5.1 G	Suitability (non-MiFID provisions)	*Client* information for *suitability report*	From date of *suitability report*	See COBS 9.5.2 R.
COBS 9.6.19 R	*Basic advice*	Decision to give *basic advice*, *range* used and *basic advice* summary prepared for *retail client*	Date on which *basic advice* given	5 years
COBS 9.6.20 R	*Scope* of *basic advice* (*stakeholder products*)	*Scope* of *basic advice* and its *range* (or *ranges*) of *stakeholder products*	Date on which the *scope* and *range* becomes relevant	5 years from the date replaced by more up-to-date record
COBS 9A.4.1G	Suitability (MiFID provisions)	*Client* information for *suitability report*	From date of *suitability report*	At least 5 years
COBS 9A.4.3UK	Suitability (insurance-based investment products)	*Client* information for *suitability report* - details in COBS 9A.4.3UK and COBS 9A.4.4UK	From date of *suitability report*	For whichever is the longer of 5 years or the duration of the relationship with the *client*

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 10.7.1 G	Appropriateness (non-MiFID provisions)	*Client* information obtained in making assessment of appropriateness and the appropriateness assessment	Date of assessment	At least 5 years
COBS 10A.7.2UK	Appropriateness (MiFID provisions)	Records of appropriateness assessments including the results of such assessments and any warnings given to *clients*	Date of assessment	At least 5 years
COBS 10A.7.2AUK	Appropriateness (insurance-based investment products)	Records of appropriateness assessments including the results of such assessments and any warnings given to *clients* - details in COBS 10A.7.2A	Date of assessment	For whichever is the longer of 5 years or the duration of the relationship with the *client*
COBS 11.5A.4UK	*Client* orders	Initial orders from *clients* and decisions to deal	Immediately	At least 5 years
COBS 11.5A.5UK	*Client* orders	Transactions and order processing	Immediately	At least 5 years
COBS 11.7.4 R	Personal account dealing	Notifications by outsourcing provider and authorisation or prohibition.	Date of notification or decision.	5 years
COBS 11.7A.5UK	Personal account dealing (MiFID provisions)	A record of any personal transaction notified or identified, including any authorisation or prohibition	Date of notification, identification or decision	At least 5 years
COBS 11A.1.4BR(3)(c)	The *firm's* assessment under COBS 11A.1.4BR(3)(a)	1) The *firm's* process for conducting the assessment and reaching the opinion under COBS 11A.1.4BR (3)(a);	Once the *firm* has formed its opinion under COBS 11A.1.4BR (3)(a)	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		(2) the *firm's* staff that were involved in reaching that opinion; and (3) an explanation of the *firm's* consideration of the number and expertise of the unconnected analysts included in the range.		
COBS 11A.1.4CR	Restrictions on unconnected analysts	Any restrictions that would be imposed on each unconnected analyst that accepts the opportunity under COBS 11A.1.4BR(2)	When the opportunity is communicated to the range of unconnected analysts	5 years
COBS 11A.1.4ER	Information given by the *issuer* team during the relevant period under COBS 11A.1.4BR(2)(b)(iv)	(1) The information on the *issuer* or the relevant securities that is given by the *issuer* team to the *firm's* analysts during the relevant period under COBS 11A.1.4BR(2)(b)(iv); and (2) the information on the *issuer* or the relevant securities that is given by the *issuer* team to each of the range of unconnected analysts during the same period.	At the end of the relevant period under COBS 11A.1.4BR(2)(b)(iv)	5 years
COBS 11A.1.9UK	Underwriting and placing	Content and timing of instructions received from *clients* and allocation decisions	Date of receipt of instructions or of allocation decision	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 15.3.4 R	Cancellation: exercise of right	Exercise of the right to cancel or withdraw	Date of exercise	As specified in COBS 15.3.4 R(1), (2) and (3)
COBS 16.2.7 R	Confirmation to *clients* (non-MiFID provisions)	Copy of a confirmation	From date of despatch to *client*	At least 3 years
COBS 16.3.11 R	*Periodic statements* (non-MiFID provisions)	A copy of a *periodic statement* sent to a *client*	From date of despatch to *client*	At least 3 years
COBS 16A.3.1UK	Confirmation to *clients* (MiFID provisions)	A copy of a confirmation	From date of despatch to *client*	At least 5 years
COBS 16A.4.1UK	*Periodic statements* (MiFID provisions)	A copy of a *periodic statement* sent to a *client*	From date of despatch to *client*	At least 5 years
COBS 16A.4.2UK	*Periodic statements* (insurance-based investment products)	A copy of a *periodic statement* sent to a *client*	From date of despatch to *client*	At least 5 years
COBS 16.6.6 R	Life insurance contracts	Information to be provided during the terms of the contract	When information is given	5 years after information given
COBS 18.5.14 R	*Residual CIS operators* and small authorised UK AIFMs of an unauthorised AIF	*Periodic statement* to be provided to *participants*	When provided	3 years
COBS 18 Annex 2 2.1R	*Client* orders and decisions to deal in *portfolio management*	Orders received from *clients* and decisions taken - details in COBS 18 Annex 2 2.1R(2)	Immediately	5 years
COBS 18 Annex 2 3.1R	*Client* orders	Execution of orders	Immediately after executing a *client* order, or, in the case of *firms* that transmit orders to another *person* for *execution*, immediately after receiving confirmation that an order has been *executed*	5 years
COBS 18 Annex 2 3.2R	*Client* orders	Transmission details (see COBS 18 Annex 2 3.2R)	Immediately on transmitting an order to another *person* for *execution*	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COBS 19.1.7CR	Execution only pension transfer or opt out	That no *personal recommendation* was given to the *client*	Date of transaction	Indefinitely
COBS 19.2.3 R	Promotion of personal pension scheme	Why the promotion was justified	When promoted	5 years
COBS 20.2.34AR (1)(a)(i)	Support assets outside the *with-profits fund*	Precise terms and conditions on which support assets operate and are available including whether and when they are repayable	When a *firm* first has support assets outside the *with-profits fund*	Until the *firm* ceases to use support assets outside the *with-profits fund*
COBS 20.2.36A R	*strategic investments*	A description of the strategic purpose for which a *strategic investment* has been purchased or retained	Before making a *strategic investment* or when reviewing whether to retain a *strategic investment*	Until the *firm* ceases to hold the *strategic investment* in question
COBS 20.3.1 R	*PPFMs*	Each version of the *PPFM*	Date on which the *PPFM* is relevant	5 years
COBS 22.2.6 R	Retail distribution of mutual society shares	Information and evidence demonstrating compliance with the requirements of COBS 22.2	At or near the time of the sale to a *retail client*	5 years for *MiFID or equivalent third country business* and 3 years for other business
COBS 22.3.5 R	Retail distribution of contingent convertible instruments and *CoCo funds*	Information and evidence demonstrating compliance with the restrictions in COBS 22.3	At or near the time of the sale or communication or approval of a promotion to a retail client	5 years for *MiFID or equivalent third country business* and 3 years for other business
COBS TP 1	*Client* categorisation transitional	Categorisation or re-categorisation under TP1	Date of categorisation/ re-categorisation	See COBS 3.8.2 R (2)
COBS TP 2	*Investment research* transitional	Election to comply with COBS 12.2 - COBS 12.3 sooner than 1 May 2008	Date of decision and date from which election is to be effective	5 years
COBS TP 2	Specialist regimes	Election to comply with COBS 18 sooner than 1 May 2008	Date of decision and date from which election is to be effective	5 years

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Schedule 2
Notification requirements

Sch 2.1 G

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
COBS 20.2.19AR (1)	Details of a proposed distribution	Written details of the proposed distribution, together with copies of draft notifications it proposes to send to *policyholders*.	The proposed distribution to *policyholders* is smaller than the 'pre-notification to *policyholder* minimum' calculated in accordance with COBS 20.2.19BR (1).	At least two months prior to the proposed distribution
COBS 20.2.19AR (2)	Details of a proposed distribution	Written details of the proposed distribution, together with copies of draft notifications it proposes to send to *policyholders*.	The distribution to *policyholders* does not meet the test in COBS 20.2.19AR (1) but is smaller than the 'after the event notification to *policyholder* minimum' calculated in accordance with COBS 20.2.19BR (2).	At least one month prior to the proposed distribution
COBS 20.2.45 R	Appointment of *policyholder advocate*.	The terms on which the *firm* proposes to appoint a *policyholder advocate*.	Proposal to appoint *policyholder advocate*.	As soon as reasonably practicable
COBS 21.2.8 R	Breach of COBS 21.3.5 R	Any failure to meet the requirements of COBS 21.3.5 R	Breach of COBS 21.3.5 R	As soon as the *firm* becomes aware of the failure
COBS 20.5.5R (3)	The decision of a *firm's governing body* to depart from the advice or recommendation of the *with-profits*	A description of: (1) the decision of, and reasons given by, the *firm's governing body*;	The *with-profits committee* or advisory arrangement considers that the issue is sufficiently signific-	As soon as reasonably practicable

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
	committee or advisory arrangement.	(2) the recommendation and advice of the *with-profits committee* or advisory arrangement; together with a copy of the *firm's* records of the decision, reasons, advice and recommendations.	ant and requests of the *governing body* that the *FSA* be informed.	

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Schedule 3
Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in *COBS*.

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Schedule 4
Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

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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

			Right of action under section 138D			
Chapter/ Appendix	Section/ Annex	Paragraph	For private person?	Removed?	For other person?	
All *rules* in *COBS* with the status letter "E"			No	No	No	
Any *rule* in *COBS* which prohibits an *authorised person* from seeking to make provision excluding or restricting any duty or liability			Yes	No	Yes	Any other person
Any *rule* in *COBS* which is directed at ensuring that transactions in *designated investments* 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 *fair, clear and not misleading rule*			Yes	In part (Note 1)	No	
All other *rules* in *COBS*			Yes	No	No	

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*.

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Schedule 6
Rules that can be waived

Sch 6.1 G

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*.