Conduct of Business Sourcebook
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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 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 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:

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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.

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.

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.
Structured deposits: further provisions

1.1.1AA

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 [EU]

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 referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under 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 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 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:"

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**[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.

**Auction regulation bidding**

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

**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).
1.2 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 transpose MiFID.

(2) In order to help firms which are subject to the requirements of MiFID to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the directly applicable MiFID Org Regulation, marked with the status letters “EU”. The authentic provisions of the MiFID Org Regulation are directly applicable to firms in relation to their MiFID business.

(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 the electronic version of the Official Journal of the European Union for:

(a) the authentic version of the applicable articles of the MiFID Org Regulation; and

(b) a comprehensive statement of its obligations under the MiFID Org Regulation.

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 “EU” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“ancillary services”</td>
<td>ancillary service</td>
</tr>
<tr>
<td>Term</td>
<td>Glossary Item</td>
</tr>
<tr>
<td>------</td>
<td>---------------</td>
</tr>
<tr>
<td>“client” and “potential client”</td>
<td>client</td>
</tr>
<tr>
<td>“competent authority”</td>
<td>FCA</td>
</tr>
<tr>
<td>“conditions specified in Article 3(2)”</td>
<td>website conditions</td>
</tr>
<tr>
<td>“derivative”</td>
<td>as defined in article 4(1)(49) of MiFID</td>
</tr>
<tr>
<td>“Directive 2014/65/EU”</td>
<td>MiFID</td>
</tr>
<tr>
<td>“distributing units in collective investment undertakings”</td>
<td>distributing units in a UCITS</td>
</tr>
<tr>
<td>“durable medium”</td>
<td>durable medium</td>
</tr>
<tr>
<td>“eligible counterparty”</td>
<td>eligible counterparty</td>
</tr>
<tr>
<td>“financial analyst”</td>
<td>financial analyst</td>
</tr>
<tr>
<td>“financial instrument”</td>
<td>financial instrument and (if the context requires) designated investment and structured deposit</td>
</tr>
<tr>
<td>“funds”</td>
<td>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.</td>
</tr>
<tr>
<td>“group”</td>
<td>as defined in article 4(1)(34) of MiFID</td>
</tr>
<tr>
<td>“investments”</td>
<td>financial instrument and (if the context requires) designated investment and structured deposit</td>
</tr>
<tr>
<td>“investment advice”</td>
<td>personal recommendation</td>
</tr>
<tr>
<td>“investment firm” and “firm”</td>
<td>firm</td>
</tr>
<tr>
<td>“investment research”</td>
<td>investment research</td>
</tr>
<tr>
<td>“investment service” and “investment services and activities”</td>
<td>investment service and investment services and/or activities or (if the context requires) designated investment business</td>
</tr>
<tr>
<td>“market maker”</td>
<td>market maker</td>
</tr>
<tr>
<td>“periodic statement”</td>
<td>periodic statement</td>
</tr>
<tr>
<td>“PRIIPs KID”</td>
<td>key information document</td>
</tr>
<tr>
<td>“portfolio management” and “portfolio management service”</td>
<td>portfolio management</td>
</tr>
<tr>
<td>“professional client”</td>
<td>professional client</td>
</tr>
<tr>
<td>“professional client covered by Section 1 of Annex II to Directive 2014/65/EU”</td>
<td>per se professional client</td>
</tr>
<tr>
<td>“professional client in accordance with Section 2 of Annex II to Directive 2014/65/EU”</td>
<td>elective professional client</td>
</tr>
<tr>
<td>“Regulation (EU) No. 1286/2014”</td>
<td>PRIIPs Regulation</td>
</tr>
<tr>
<td>“relevant person”</td>
<td>relevant person</td>
</tr>
<tr>
<td>“retail client”</td>
<td>retail client</td>
</tr>
</tbody>
</table>
(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 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 “EU” to assist in interpreting any such references or cross-references.

Interpretation – “in good time”

1.2.5 (1) Certain of the provisions in this sourcebook which implement 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. See [https://www.esma.europa.eu/system/files_force/library/esma35-43-869-_fr_on_guidelines_on_suitability.pdf?download=1];

guidelines on cross-selling practices. See [https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf]; and

guidelines on complex debt instruments and structured deposits. See [https://www.esma.europa.eu/sites/default/files/library/2015-1787_-_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf].]
1.3 Insurance distribution

References in COBS to the IDD Regulation

1.3.1 G

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

(2) In order to help firms which are subject to the requirements of the IDD to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the directly applicable IDD Regulation, marked with the status letters “EU”. The authentic provisions of the IDD Regulation are directly applicable to firms carrying on insurance distribution in relation to insurance-based investment products.

(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 the electronic version of the Official Journal of the European Union for:

(a) the authentic version of the applicable articles of the IDD Regulation; and

(b) a comprehensive statement of its obligations under the IDD Regulation.

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 “EU” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“advice”</td>
<td>personal recommendation</td>
</tr>
<tr>
<td>“article 20(1) of Directive (EU) 2016/97”</td>
<td>COBS 9A.2.3AR or COBS 7.3.4R</td>
</tr>
<tr>
<td>“article 30(1) of Directive (EU) 2016/97”</td>
<td>COBS 9A.2.1R and COBS 9A.2.16R</td>
</tr>
</tbody>
</table>
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 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 “EU” to assist in interpreting any such references or cross-references.

Interpretation – “in good time”

1.3.5 (1) Certain provisions in this sourcebook which implement 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

<table>
<thead>
<tr>
<th>1.</th>
<th>Eligible counterparty business</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>R</td>
</tr>
</tbody>
</table>

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 implement the IDD continue to apply.

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

[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.

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

[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 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 implement 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 (as 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 implement 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

8.1 R The general application rule is modified so that a firm will not be subject to COBS to the extent that it would be contrary to the United Kingdom’s obligations in respect of the PRIIPs Regulation.

Part 2: Where?

Modifications to the general application according to location

1. EEA territorial scope rule: compatibility with European law

1.1 R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 3 for guidance on this).

(2) This rule overrides every other rule in this sourcebook.
1.2 R In addition to the **EEA territorial scope rule**, the effect of the *Electronic Commerce Directive* on territorial scope is applied in the fields covered by the ‘derogations’ in the Annex to that Directive other than the ‘insurance derogation’ in the fourth indent (see paragraph 7.3 of Part 3 for guidance on this).

[Note: article 3(3) of, and Annex to, the *Electronic Commerce Directive*]

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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 One of the effects of the **EEA territorial scope rule** is to override the application of this sourcebook to the overseas establishments of **EEA firms** in a number of cases, including circumstances covered by MiFID, the *Distance Marketing Directive* or the *Electronic Commerce Directive*. See Part 3 for guidance on this.

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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 The provisions of the **Single Market Directives** and other directives also extensively modify the general application of this sourcebook, particularly in relation to territorial scope.

1.3 G In particular, 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. For the avoidance of doubt, nothing in COBS 18 modifies the effect of the *EEA territorial scope rule*.

2. **The Single Market Directives and other directives**

2.1 G This guidance provides a general overview only and is not comprehensive.

2.2 G When considering the impact of a directive on the territorial application of a *rule*, a *firm* will first need to consider whether the relevant situation involves a non-UK element. The **EEA territorial scope rule** is unlikely to apply if a *UK firm* is doing business in a *UK establishment* for a *client* located in the *United Kingdom* in relation to a *United Kingdom* product. However, if there is a non-UK element, the *firm* should consider whether:

(1) it is subject to the directive (in general, directives only apply to *UK firms* and *EEA firms*, but the implementing provisions may not treat non-EEA *firms* more favourably than *EEA firms*);

(2) the business it is performing is subject to the directive; and
(3) the particular rule is within the scope of the directive.

If the answer to all three questions is ‘yes’, the EEA territorial scope rule may change the general application of this sourcebook.

2.3 G When considering a particular situation, a firm should also consider whether two or more directives apply.

3. MiFID: effect on territorial scope

3.1 G PERG 13 contains general guidance on the persons and businesses to which MiFID applies.

3.2 G This guidance concerns the rules within the scope of MiFID including those rules which are in the same subject area as the implementing rules. A rule is within the scope of MiFID if it is followed by a ‘Note’ indicating the article of MiFID or the MiFID Delegated Directive which it implements.

3.3 G For a UK MiFID investment firm, rules in this sourcebook that are within the scope of MiFID generally apply to its MiFID business carried on from an establishment in the United Kingdom. They also generally apply to its MiFID business carried on from an establishment in another EEA State, but only where that business is not carried on within the territory of that State. (See articles 34(1), 35(1) and 35(8) of MiFID)

3.4 G For an EEA MiFID investment firm, rules in this sourcebook that are within the scope of MiFID generally apply only to its MiFID business if that business is carried on from an establishment in, and within the territory of, the United Kingdom. (See article 35(1) and 35(8) of MiFID)

3.5 G However, the rules on investment research and non-independent research (COBS 12.2, except for COBS 12.2.18EU) and the rules on personal transactions (COBS 11.7A) apply on a “home state” basis. This means that they apply to the establishments of a UK MiFID investment firm in the United Kingdom and another EEA State and do not apply to an EEA MiFID investment firm.

3.6 G Firms to which MiFID applies or which are subject to requirements in MiFID (including MiFID optional exemption firms) should also have regard to the rules and guidance in COBS 1.2.

4. Insurance Distribution Directive: effect on territorial scope

4.1 G The IDD’s scope covers most firms carrying on most types of insurance distribution in relation to risks and commitments located in an EEA State.

4.1A G The rules in this sourcebook within the Directive’s scope are those relating to life policies that implement the minimum requirements in articles 1(4), 17, 18, 19, 20, 21, 23, 24(1) to (3) and (6), 29, and 30 of the IDD are set out in:

(1) COBS 2.1.1R, COBS 2.2A and COBS 2.3A (Conduct of business obligations);
(2) COBS 4 (Communicating with clients, including financial promotions);
(3) COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions));
(4) COBS 7 (Insurance distribution);
(5) COBS 8 (Client agreements);
(6) 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));
(7) COBS 10A (Appropriateness (for non-advised services));
(8) COBS 14.2 (Providing product information to clients); and
(9) COBS 16A.2 (General client reporting and record keeping requirements).

4.1B G A Member State is entitled to impose additional requirements within the IDD’s scope in the ‘general good’ (see recital 52 to, and article 22 of, the IDD).

4.2 G The IDD places responsibility for requirements in this sourcebook within the Directive’s scope (both minimum and additional requirements) on the Home State, except:
1. in relation to business conducted through a branch, in which case the responsibility rests with the EEA State in which the branch is located (this is sometimes referred to as a ‘country of origin’ or ‘country of establishment’ basis) (see recital 22 to, and article 7(2) of, the IDD). So firms operating under the freedom of establishment in the UK must adhere to the requirements in the UK, regardless of the habitual residence of the customer (other than in the situations described in (2)); and

2. where a Member State has:

(a) introduced the stricter requirements in article 29(3) of the IDD; or

(b) introduced requirements which have not made use of the derogation in article 30(3) of the IDD to allow firms not to carry out an appropriateness assessment in relation to a non-advised sale of an insurance-based investment product,

firms concluding contracts with customers having their habitual residence or establishment in that Member State must adhere to the more onerous requirements in (a) or (b) in force in that State.

4.3 G Accordingly, the general rules on territorial scope are not modified by the IDD except:

1. for an EEA firm providing passported activities under the Directive in the United Kingdom, the additional rules within the Directive’s scope have their unmodified territorial scope unless the Home State imposes measures of like effect.

2. for insurance distribution business carried on by insurers:

(a) minimum and additional requirements apply to a UK firm unless responsibility for any matter it covers is reserved by the Solvency II Directive to the firm’s Host State regulator; and

(b) paragraphs (1), (3), (4) and 4.4G, below, apply in the same way unless the responsibility for any matter it covers is reserved by the Solvency II Directive to the firm’s Home State regulator.

3. for a UK firm concluding contracts with customers having their habitual residence or establishment another Member State, it must comply with the requirements of that Member State falling within 4.2G(2);

4. for an EEA firm providing passported activities in the United Kingdom under the IDD the rules in COBS which give effect to article 29(3) apply, where the client has their habitual residence or establishment in the UK, when it is operating under the freedom to provide services.

4.4 G An EEA firm acting as the principal of an appointed representative carrying on insurance distribution activities from an establishment in the UK is required to ensure that its appointed representative complies with this sourcebook.

5. Solvency II Directive: effect on territorial scope

5.1 G The Solvency II Directive’s scope covers long-term insurers. The rules in this sourcebook within the Solvency II Directives’s scope are the cancellation rules(COBS 15) and those rules requiring the provision of pre-contract information or information during the term of the contract concerning the insurer or the contract of insurance. The Solvency II Directive specifies minimum information and cancellation requirements and permits EEA States to adopt additional information requirements that are necessary for a proper understanding by the policyholder of the essential elements of the commitment.

5.2 G If the State of the commitment is an EEA State, the Solvency II Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the State of the commitment is the United Kingdom, the relevant rules in this sourcebook apply. Those rules do not apply if the State of the commitment is another EEA State. The territorial scope of other rules, in particular the financial promotion rules, is not affected since the Solvency II Directive explicitly
permits EEA States to apply rules, including advertising rules, in the ‘general good’. (See articles 156, 180, 185 and 186 of the Solvency II Directive)

6. Distance Marketing Directive: effect on territorial scope

6.1 G In broad terms, a firm is within the Distance Marketing Directive’s scope when conducting an activity relating to a distance contract with a consumer. The rules in this sourcebook within the Directive’s scope are those requiring the provision of pre-contract information, the cancellation rules (COBS 15) and the other specific rules implementing the Directive contained in COBS 5 (Distance communications).

6.2 G In the FCA’s view, the Directive places responsibility for requirements within the Directive’s scope on the Home State except in relation to business conducted through a branch, in which case the responsibility rests with the EEA State in which the branch is located (this is sometimes referred to as a ‘country of origin’ or ‘country of establishment’ basis). (See article 16 of the Distance Marketing Directive)

6.3 G This means that relevant rules in this sourcebook will, in general, apply to a firm conducting business within the Directive’s scope from an establishment in the United Kingdom (whether the firm is a national of the UK or of any other EEA or non-EEA state).

6.4 G Conversely, the territorial scope of the relevant rules in this sourcebook is modified as necessary so that they do apply to a firm conducting business within the Directive’s scope from an establishment in another EEA state if the firm is a national of the United Kingdom or of any other EEA state.

6.5 G In the FCA’s view:

(1) the ‘country of origin’ basis of the Directive is in line with that of the Electronic Commerce Directive and the IDD; (See recital 6 of the Distance Marketing Directive)

(2) for business within the scope of both the Distance Marketing Directive and the Solvency II Directive, the territorial application of the Distance Marketing Directive takes precedence; in other words, the rules requiring pre-contract information and cancellation rules (COBS 15) derived from the Solvency II Directive apply on a ‘country of origin’ basis rather than being based on the State of the commitment; (See articles 156, 180, 185 and 186 of the Distance Marketing Directive)

(3) [deleted]

7. Electronic Commerce Directive: effect on territorial scope

7.1 G The Electronic Commerce Directive’s scope covers every firm carrying on an electronic commerce activity. Every rule in this sourcebook is within the Directive’s scope.

7.2 G A key element of the Directive is the ability of a person from one EEA state to carry on an electronic commerce activity freely into another EEA state. Accordingly, the territorial application of the rules in this sourcebook is modified so that they apply at least 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 or another EEA state. Conversely, a firm that is a national of the UK or another EEA State, carrying on an electronic commerce activity from an establishment in another EEA State with or for a person in the United Kingdom need not comply with the rules in this sourcebook. (See article 3(1) and (2) of the Electronic Commerce Directive)

7.3 G The effect of the Directive on this sourcebook is subject to the ‘insurance derogation’, which is the only ‘derogation’ in the Directive that the FCA has adopted for this sourcebook. The derogation applies to an insurer that is authorised under and carrying on an electronic commerce activity within the scope of the Solvency II Directive and permits EEA States to continue to apply their advertising rules in the ‘general good’. Where the derogation applies, the financial promotion rules continue to apply for incoming electronic commerce activities (unless the firm’s ‘country of origin’ applies rules of like effect) but do not apply for outgoing electronic commerce activities. (See article 3(3) and Annex, fourth indent of the Electronic Commerce Directive; Annex to European Commission Discussion Paper MARKT/2541/03)
In the FCA’s view, the Directive’s effect on the territorial scope of this sourcebook (including the use of the ‘insurance derogation’):

(1) is in line with the Distance Marketing Directive and the IDD; and
(2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.

The ‘derogations’ in the Directive may enable other EEA States to adopt a different approach to the United Kingdom in certain fields. (See recital 19 of the IDD, recital 6 of the Distance Marketing Directive, article 3 and Annex of the Electronic Commerce Directive)

The Investor Compensation Directive generally requires MiFID investment firms to belong to a compensation scheme established in accordance with the Directive. The rules in this sourcebook that implement the Directive are those (i) requiring MiFID investment firms, including their branches, to make available specified information about the compensation scheme to which they belong and specifying the language in which such information must be provided (COBS 6.1.16 R) and (ii) restricting mention of the compensation scheme in advertising to factual references (COBS 4.2.5 G).

In the FCA’s view, these matters are a Home State responsibility although a Host State may continue to apply its own rules in the ‘general good’. Accordingly, these rules apply to the establishments of a UK MiFID investment firm in the United Kingdom and another EEA State but also apply in accordance with their standard territorial scope to an EEA MiFID investment firm providing services in the UK unless its Home State applies rules of like effect.

The UCITS Directive covers undertakings for collective investment in transferable securities (UCITS) meeting the requirements of the Directive, and their management companies and depositaries. The rules in this sourcebook within the Directive’s scope (all of which will apply to a management company) are those in:

(1) COBS 2.1 (Acting honestly, fairly and professionally);
(2) COBS 2.3 (Inducements);
(3) COBS 4.2.1 R (The fair, clear and not misleading rule);
(4) COBS 4.3.1 R (Financial promotions to be identifiable as such);
(5) COBS 4.13 (UCITS);
(6) COBS 11.2B (Best execution for UCITS management companies);
(7) COBS 11.3 (Client order handling);
(8) COBS 11.7 (Personal account dealing);
(9) COBS 14 (Providing product information to clients) relating to the provision of key investor information by the management company (in addition to applying to a management company, COBS 14.2 also applies to an ICVC that is a UCITS scheme); and
(10) COBS 16.2 (Occasional reporting).

The majority of the COBS rules referred to in paragraph 9.1 are rules of conduct which each EEA State must draw up under article 14.1 of the UCITS Directive which management companies authorised in that State must observe at all times. The exceptions are COBS 4 and COBS 14 in so far as they relate to a UCITS scheme, which form part of the FCA’s fund application rules and which are the responsibility of the UCITS Home State (for a UCITS scheme, the FCA - see COLL 12.3.5 R (COLL fund rules under the management company passport: the fund application rules) and article 19 of the UCITS Directive).

Where a management company is providing collective portfolio management services for a UCITS established in a different EEA State, responsibility for its compliance with the applicable rules of conduct drawn up under article 14 will generally
be for the management company’s Home State, but when a branch is established it will be the responsibility of the Host Member State (UCITS Home State) (see articles 17(4) and 17(5) of the UCITS Directive).

9.1C G Under the UCITS Directive certain Host State marketing and MiFID-specific rules might also apply to a management company providing collective portfolio management services for a UCITS established in a different EEA State. Consequently, an EEA UCITS management company should note that, under COBS, certain of the FCA’s rules apply to it, including the financial promotion rules. COBS 4.13 (UCITS) is concerned with marketing communications for UCITS schemes and EEA UCITS schemes.

9.1D G EEA UCITS management companies should be aware that there is a special narrower application of COBS for scheme management activity provided for by COBS 18.5B (UCITS management companies).

9.2 G [deleted]

9.3 G The Directive does not affect the territorial scope of rules as they apply to an intermediary (that is not a management company) selling units of a UCITS.

[Note: articles 12, 14, 17, 18, 19 and 94 of the UCITS Directive]

10. AIFMD: effect on territorial scope

10.1 G PERG 16 contains general guidance on the businesses to which AIFMD applies. FUND 1 contains guidance on the types of AIFM.

10.2 G The only rule in this sourcebook which implements AIFMD is COBS 2.1.4 R, which applies to:

(1) a full-scope UK AIFM operating from an establishment in the UK or a branch in another EEA State; and

(2) an Incoming EEA AIFM branch.

10.3 G The other rules in COBS which apply to a full-scope UK AIFM or incoming EEA AIFM (including an AIFM qualifier) fall outside the scope of AIFMD and are, therefore, not affected by its territorial scope.

10.4 G Incoming EEA AIFM branches should be aware that there is a special narrower application of COBS for AIFM investment management functions provided for by COBS 18.5A (Full-scope UK AIFMs and incoming EEA AIFM branches).

11. SRD: effect on territorial scope

11.1 G SRD includes a number of requirements on SRD asset managers. These requirements are implemented in COBS 2.2B.

11.2 G SRD provides that the EEA State competent to regulate these requirements is the Home State as defined in the applicable sector-specific legislation. COBS 2.2B therefore applies where a UK firm carries on activities from an establishment in the United Kingdom or another EEA State, as set out in COBS 2.2B.4R.

[Note: article 1(2)(a) of SRD]
Chapter 2

Conduct of business obligations
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 or EEA 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  
A full-scope UK AIFM and an incoming EEA AIFM branch 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  
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 Information disclosure before providing services (other than MiFID and insurance distribution)

Application

2.2.1 (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.

2.2.1A [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.]
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

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

Application

2.2A.1 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 (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 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 (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).
2.2B SRD requirements

Application: Who?

2.2B.1 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 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 The defined term regulated market has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the EEA.

Application: Where?

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

(2) This section also applies in relation to activities carried on by a UK firm from an establishment in another EEA State.

Engagement policy and disclosure of information

2.2B.5 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 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 (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 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

(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;
   (f) 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]

A firm may provide the disclosure in COBS 2.2B.9 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 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 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 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.
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

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 or EEA 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 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 or EEA 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
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*.

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

2.3.1A ▶ **COBS 2.3.1 R** applies to a *UK UCITS management company* and *EEA 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 ▶ 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 ▶ **COBS 2.3.2 R** applies to a *UK UCITS management company* and *EEA 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

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 [deleted]

2.3.4A **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**).
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.

[deleted]

G2.3.6A [deleted]

G2.3.7 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.

[deleted]

Paying commission on non-advised sales of packaged products

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.

(1) If a firm is required to disclose commission (see G2.3.4) 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 (G2.3.1 R).
2.3.11 (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 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 (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 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 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 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 (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 This table belongs to COBS 2.3.14 G.

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A retail investment product provider giving and a firm receiving gifts, hospitality and promotional competition prizes of a reasonable value.</td>
</tr>
<tr>
<td>2</td>
<td>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.</td>
</tr>
<tr>
<td>3</td>
<td>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.</td>
</tr>
<tr>
<td>4</td>
<td>A retail investment product provider supplying another firm with ‘freepost’ envelopes, for forwarding such items as completed applications, medical reports or copy client agreements.</td>
</tr>
<tr>
<td>5</td>
<td>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.</td>
</tr>
<tr>
<td>6</td>
<td>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.</td>
</tr>
<tr>
<td>7</td>
<td>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...</td>
</tr>
</tbody>
</table>
(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 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 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 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 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 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 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).

Record keeping: inducements

2.3.17 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 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 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 § 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 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
(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

(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

(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, \[COBS 2.3A.9AEU\]); 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 fulfill 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
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

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]

2.3A9B COBS 2.3A.9AEU 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

2.3A10 (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]

2.3A11 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

(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

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

(1) (for MiFID, equivalent third country or optional exemption business) in article 24(4)(c) of MiFID and article 50 of the MiFID Org Regulation (see COBS 6.1ZA.11R to COBS 6.1ZA.13R and COBS 6.1ZA.14EU); and

(2) (for insurance-based investment products) in 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

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

(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

(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.
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 article 11(5)(a) of the MiFID Delegated Directive (see ■ 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; or

(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.

[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]
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 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)

Paying commission on non-advised sales of packaged products

2.3A.23 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 (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 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

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.26

2.3A.27

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’.


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 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 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 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 This section applies to a firm carrying on MiFID, equivalent third country or optional exemption business.

2.3B.2 (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 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 The requirements referred to in COBS 2.3B.3(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]
(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.

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

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.

For the purposes of 2.3B.11R, 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 2.3B.4R(4); and
      (ii) the firm’s policy for using third party research established under 2.3B.12R.

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

(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

(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]
Research for the purposes of research payment accounts

2.3B.21  
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  
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  
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  
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

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 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. an incoming EEA AIFM branch; or
8. an OPS firm.

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

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  A firm providing both execution and research services must price and supply them separately.
2.3C.4 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]
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.

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 RTS 22.

Agent as client

(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.
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 or authorised in another EEA State; 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) or equivalent requirements in another EEA State 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, or equivalent requirements in another EEA State 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 equivalent requirements in another EEA State; 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 or equivalent requirements in another EEA State,

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 2.4.5 AR) 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 2.4.6 R (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.
Restriction on marketing or providing an optional product for which a fee is payable

(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 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 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 Firms are reminded that they must ensure that their appointed representatives comply with this section COBS 2.5.
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 "EU" 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.
General definition

3.2.1 (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 and SUP 12.3.5 R).

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

3.2.2 (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?

(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 General notifications

3.3.1 [deleted]

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

(1) Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised as required by Directive 2014/65/EU, 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 3.3.1AEU) 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 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 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.
3.5 Professional clients

3.5.1 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 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 by an EEA State or a third country and whether or not authorised by reference to a directive:

(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;
(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 any of 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 [deleted]

3.5.2B 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.
3.5.2C  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  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;

(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 (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).
3.5.3E  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 relevant “quantitative test” under paragraph (2).

(2) The relevant “quantitative test” under this rule is either:

(a) where the local public authority or municipality is established in an EEA State and the EEA State has adopted alternative or additional criteria to those listed in the fifth paragraph to section II.1 of annex II to MiFID, those criteria as set out in the law or measures of that EEA State; or

(b) in any other case the same “quantitative test” that is applied in relation to MiFID or equivalent third country business under §COBS 3.5.3R(2).

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 entities licensed under directives in the financial field 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 (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 Each of the following is a per se eligible counterparty (including an entity that is not from an EEA State 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 UCITS Directive or its management company;

(5) a pension fund or its management company;

(6) another financial institution authorised or regulated under EU legislation or the national law of an EEA State;

(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 For the purpose of COBS 3.6.2 R (6), a financial institution includes regulated institutions in the securities, banking and insurance sectors.
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:
   1.1 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:
      1.1.1 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
      1.1.2 meets the criteria in the rule on meeting two quantitative tests (COBS 3.5.2 R (3)(b)); and
   1.2 requests such categorisation; and

2. the firm adheres to the procedure set out at COBS 3.6.4BEU.

3.6.4A **EU**

Provided that it adheres to the procedure set out at COBS 3.6.4BEU, 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 3.5.2 R(5); and

3. requests such categorisation.

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

3.6.4B **EU**

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 Article 30(3) of Directive 2014/65/EU, 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 *EEA State* 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** In the case of *MiFID or equivalent third country business*, in the event of a transaction where the prospective counterparties are located in different *EEA States*, the *firm* shall defer to the status of the other undertaking as determined by the law or measures of the *EEA State* in which that undertaking is established.

[Note: first paragraph of article 30(3) of *MiFID*]
3.7 Providing clients with a higher level of protection

3.7.1 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 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 [deleted]

3.7.3A 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 Article 30(2) of Directive 2014/65/EU;

(b) a retail client where that client that is considered a professional client pursuant to Section I of Annex II to Directive 2014/65/EU.

3.7.3B 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 the second subparagraph of Article 30(2) of that Directive 2014/65/EU, an eligible counterparty requests treatment as a client whose business with an investment firm is subject to Articles 24, 25, 27 and 28 of that Directive, 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 Articles 24, 25, 27 and 28 of
Directive 2014/65/EU, 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 the second, third and fourth sub-paragraphs of Section I of Annex II to Directive 2014/65/EU.

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 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 (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 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?

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;
   b. a financial promotion in respect of a non-investment insurance contract;
   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);
   d. a financial promotion in relation to a credit agreement, a consumer hire agreement or a credit-related regulated 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 1.1.1A.

4.1A 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 (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 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 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 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]

4.1.7A 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.
(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

(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.

Where? Modifications to comply with EU law

(1) The EEA territorial scope rule modifies the general territorial scope of the rules in this chapter to the extent necessary to be compatible with European law. This means that in a number of cases, the rules in this chapter will apply to communications made by UK firms to persons located outside the United Kingdom and will not apply to communications made to persons inside the United Kingdom by EEA firms. Further guidance on this is located in COBS 1 Annex 1.

(2) One effect of the EEA territorial scope rule is that the rules in this chapter will not generally apply to an EEA key investor information document but will, for example, apply to a firm (including an EEA UCITS management company) when marketing in the United Kingdom the units of an EEA UCITS scheme that is a recognised scheme.

(3) The financial promotion rules do not apply to incoming communications in relation to the MiFID business of an investment firm from another EEA State that are, in its home member state, regulated under MiFID other than to the extent COBS 4.12.
(Restrictions on the promotion of non-mainstream pooled investments) applies.

4.1.10  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

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]

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]

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

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.

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

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...
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

(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 an EEA UCITS scheme, or
(b) insurance distribution,

(2) and (3) do not limit the application of this rule.
4.4 Compensation information

4.4.1 A firm must ensure that any reference in advertising to an investor compensation scheme established under the Investor Compensation Directive is limited to a factual reference to the scheme.

[Note: article 10(3) of the Investor Compensation Directive]

4.4.2 [deleted]

4.4.3 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.
4.5 Communicating with retail clients (non-MiFID provisions)

Application

4.5.1 (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 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 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 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 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 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 (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 (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.
Innovative finance ISA

4.5.9 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 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 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.
Subject to [COBS 4.5.13], an authorised fund manager must include in any communication about an authorised fund to which this section 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.

Where an authorised fund manager includes, in any communication about an authorised fund to which this section applies, an indication of past performance for any authorised fund it manages, it must (in addition to complying with [COBS 4.6.2] 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.

(1) Subject to paragraph (2), if a communication to which [COBS 4.5.13] 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 every subsequent communication it makes that is also subject to [COBS 4.5.13]:

(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 4.5.13] 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.

[COBS 4.5.12] to [COBS 4.5.14] 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.
4.5A Communicating with clients (including past, simulated past and future performance) (MiFID provisions)

Application

4.5A.1 (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 Provisions in this section marked "EU" apply in relation to MiFID optional exemption business as if they were rules (see ■COBS 1.2.2G).

4.5A.2A The effect of ■GEN 2.2.22AR is that provisions in this section marked “EU” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

General requirements

4.5A.3 (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.

(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 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 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 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 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  **EU**

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]

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**Consistent financial promotions**

4.5A.9  **EU**

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]

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**Past performance**

4.5A.10  **EU**

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 than that of the Member State in which the retail client or potential retail client is resident, 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]

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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 EU 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]

Future performance

4.5A.14 EU 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.14EU. 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 EU 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]
4.6 Past, simulated past and future performance (non-MiFID provisions)

Application

(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

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 that of the EEA State in which the retail client is resident, 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 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 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.

4.6.4A This Table belongs to COBS 4.6.4A

<table>
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<th>[Fund name]</th>
<th>Quarter/Year - Quarter/Year</th>
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</table>

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)/P0)*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  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;
(c) 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.

4.6.8  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  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.

4.6.9  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.-1AEU to ▀ COBS 4.7.1R contain provisions on the communication of direct offer financial promotions.

(2) In broad terms:

(a) ▀ COBS 4.7.-1AEU 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.-1AEU 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 EU 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 “EU” for third country investment firms and MiFID optional exemption firms

4.7.-1B R Provisions in this section marked “EU” 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 2.22AR is that provisions in this section marked “EU” 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.-1AEU, the provisions of articles 47 to 50 of the MiFID Org Regulation can be found reproduced in ■ COBS 6.12A and ■ COBS 14.3A.

Other direct offer financial promotions

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

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

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

(2) This rule does not require the information in (1) to be included in a direct offer financial promotion if, in order to respond to an offer or invitation contained in it, the retail client must refer to another
document or documents, which, alone or in combination, contain that information.

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

(4) [deleted]

(5) [deleted]

Guidance

4.7.2 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 (1) CObS 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 CObS 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 (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 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 [deleted]

4.7.5A ■ COBS 4.13.2 R (Marketing communications relating to UCITS schemes or EEA 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 or EEA UCITS scheme.

Warrants and derivatives

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

Non-readily realisable securities and P2P agreements

4.7.7 (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
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.

(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:

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;

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

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
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

Firms 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.
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

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

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

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 (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 

4.9.2 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 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
Financial promotions for an overseas long-term insurer

4.9.4 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 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 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 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 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 (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 (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 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 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 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 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 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 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 (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;
(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 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

(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 inducement being 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 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 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 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.

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.

(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.

(3) Where the middle column in the table in (5) refers to promotion to a category of person, this means that the invitation or inducement:

(a) is made only to recipients who the firm has taken reasonable steps to establish are persons in that category; or

(b) is directed at recipients in a way that may reasonably be regarded as designed to reduce, so far as possible, the risk of participation in, acquisition or underwriting of the non-mainstream pooled investment by persons who are not in that category.

(4) A firm may rely on more than one exemption in relation to the same invitation or inducement.
### Section 4.12: Restrictions on the promotion of non-mainstream pooled investments

<table>
<thead>
<tr>
<th>(5) Title of Exemption</th>
<th>Promotion to:</th>
<th>Promotion of a non-mainstream pooled investment which is:</th>
</tr>
</thead>
</table>
| 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 (‘EuVECa’s’); or  
5. the Regulation on European Social Entrepreneurship Funds (‘EuSEF’s’). | Any **non-mainstream pooled investment** which is such an arrangement. |
### Section 4.12: Restrictions on the promotion of non-mainstream pooled investments

**4. Eligible employees**

<table>
<thead>
<tr>
<th>(5) Title of Exemption</th>
<th>Promotion to:</th>
<th>Promotion of a non-mainstream pooled investment which is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>An eligible employee, that is, a person who is:</td>
<td></td>
<td>1. A non-mainstream pooled investment, the instrument constituting which:</td>
</tr>
<tr>
<td>(1) an officer;</td>
<td></td>
<td>A. restricts the property of the non-mainstream pooled investment, apart from cash and near cash, to:</td>
</tr>
<tr>
<td>(2) an employee;</td>
<td></td>
<td>(1) (where the employer is a company) shares in and debentures of the company or any other connected company; [See Note 2.]</td>
</tr>
<tr>
<td>(3) a former officer or employee;</td>
<td></td>
<td>(2) (in any case), any property, provided that the non-mainstream pooled investment takes the form of:</td>
</tr>
<tr>
<td>(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.</td>
<td></td>
<td>(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</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(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</td>
</tr>
<tr>
<td></td>
<td></td>
<td>B. (in a case falling within A(1) above) restricts participation in the non-mainstream pooled investment to eligible employees, the employer and any connected company.</td>
</tr>
</tbody>
</table>
### COBS 4: Communicating with clients, including financial promotions

#### Section 4.12: Restrictions on the promotion of non-mainstream pooled investments

<table>
<thead>
<tr>
<th>Exemption Title</th>
<th>Promotion to:</th>
<th>Promotion of a non-mainstream pooled investment which is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Any non-mainstream pooled investment, provided that the participation of eligible employees is to facilitate their co-investment:</td>
<td>A scheme in the form of a limited partnership which is established for the sole purpose of underwriting insurance business at Lloyd’s.</td>
<td>Any non-mainstream pooled investment.</td>
</tr>
<tr>
<td>(i) with one or more companies in the same group as their employer (which may include the employer); or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) with one or more clients of such a company.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Members of the Society of Lloyd’s</td>
<td>A person admitted to membership of the Society of Lloyd’s or any person by law entitled or bound to administer his affairs.</td>
<td>Any non-mainstream pooled investment.</td>
</tr>
<tr>
<td>6. Exempt persons</td>
<td>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.</td>
<td>Any non-mainstream pooled investment in relation to which the client is categorised as a professional client or eligible counterparty. [See Note 4.]</td>
</tr>
<tr>
<td>7. Non-retail clients</td>
<td>An eligible counterparty or a professional client.</td>
<td>Any non-mainstream pooled investment.</td>
</tr>
<tr>
<td>8. Certified sophisticated investors</td>
<td>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 another person who is the firm’s client.</td>
<td>Any non-mainstream pooled investment.</td>
</tr>
</tbody>
</table>
### 4.12 Restrictions on the promotion of non-mainstream pooled investments

<table>
<thead>
<tr>
<th>Title of Exemption</th>
<th>Promotion to:</th>
<th>Promotion of a non-mainstream pooled investment which is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>sophisticated investors</td>
<td>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 <em>person</em> who is the <em>firm’s client</em>.</td>
<td><em>pooled investment</em> the <em>firm</em> considers is likely to be suitable for that <em>client</em>, based on a preliminary assessment of the <em>client’s profile and objectives</em>. [See COBS 4.12.5G (2)]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Solicited advice</th>
<th>Any <em>person</em>.</th>
<th>Any <em>non-mainstream pooled investment</em>, provided the communication meets all of the following requirements:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the communication only amounts to a <em>financial promotion</em> because it is a <em>personal recommendation</em> on a <em>non-mainstream pooled investment</em>;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) the <em>personal recommendation</em> is made following a specific request by that <em>client</em> for advice on the merits of investing in the <em>non-mainstream pooled investment</em>; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) the <em>client</em> has not previously received a <em>financial promotion</em> or any other communication from the <em>firm</em> (or from a <em>person</em> connected to the <em>firm</em>) which is intended to influence the <em>client</em> in relation to that <em>non-mainstream pooled investment</em>. [See Note 3.]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Excluded communications | Any *person*. | Any *non-mainstream pooled investment*, provided the *financial promotion* is an *excluded communication*. [See COBS 4.12.12 G and COBS 4.12.13 G.] |
12. Non-recognised UCITS

Promotion of a non-mainstream pooled investment which is:

Any EEA UCITS scheme which is not a recognised scheme, provided the following requirements are met:

1. The firm considers it is likely to be suitable for that client based on a preliminary assessment of the client’s profile and objectives;
2. The firm provides the client with the same product information as it would be required to provide by COBS 14.2 if the scheme was a recognised scheme.

13. US persons

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

(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) A firm which wishes to rely on exemptions 2 (certified high net worth investors), 9 (self-certified sophisticated investors) or 12 (non-recognised UCITS), as provided under COBS 4.12.4R (5), should note that these exemptions require a preliminary assessment of suitability before promotion of the non-mainstream pooled investment to 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

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 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 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 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.

4.12.10 (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) 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.

4.12.11

(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

(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) 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.

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.
4.13 UCITS

Application

4.13.1

(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 either a UCITS scheme or an EEA UCITS scheme.

[Note: recital (58) of the UCITS Directive]

Marketing communications relating to UCITS schemes or EEA UCITS schemes

4.13.2

(1) A firm must ensure that a marketing communication that comprises an invitation to purchase units in a UCITS scheme or EEA 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 or EEA key investor information document for the scheme;

(b) indicates that a prospectus exists for the scheme and that the key investor information document or EEA 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 or an EEA UCITS scheme may invest more than 35% of its scheme property in transferable securities and money market instruments issued or guaranteed by an EEA State, one or more of its local authorities, a third country or a public international body to which 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 EEA States, local authorities, third countries 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 or EEA 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) or equivalent national measures implementing article 53 of the UCITS Directive, 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 EEA UCITS scheme 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

A firm must ensure that a marketing communication (other than a key investor information document or EEA 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 (1) This section contains temporary product intervention rules and is 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 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 4.14.17R.

(6) The temporary product intervention rules in this section will cease to have effect on 31 December 2020.

Restriction on the promotion of speculative illiquid securities to retail clients

4.14.2 (1) A 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 4.14.3R.

Exemptions from the restrictions on the promotion of speculative illiquid securities

4.14.3 (1) The restriction in COBS 4.14.2R does not apply if the financial promotion falls within an exemption in the table in (4) below.

(2) Where the middle column in the table in (4) refers to promotion to a category of person, this means that the financial promotion:

(a) is made only to recipients who the firm has taken reasonable steps to establish are persons in that category; or
(b) is directed at recipients in a way that may reasonably be regarded as designed to reduce, so far as possible, the risk of acquisition of a speculative illiquid security by persons who are not in that category.

(3) A firm may rely on more than one exemption in relation to the same financial promotion.

<table>
<thead>
<tr>
<th>(4) Title of exemption</th>
<th>Promotion to:</th>
<th>Promotion of speculative illiquid security which is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Certified high net worth investor</td>
<td>An individual who meets the requirements set out in COBS 4.14.14R or a person (or persons) legally empowered to make investment decisions on behalf of such an individual.</td>
<td>Any speculative illiquid security 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 4.14.4G].</td>
</tr>
<tr>
<td>2. Certified sophisticated investor</td>
<td>An individual who meets the requirements set out in COBS 4.14.15R, 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.</td>
<td>Any speculative illiquid security.</td>
</tr>
<tr>
<td>3. Self-certified sophisticated investor</td>
<td>An individual who meets the requirements set out in COBS 4.14.16R 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.</td>
<td>Any speculative illiquid security 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 14.4.4G]</td>
</tr>
<tr>
<td>4. Excluded communications</td>
<td>Any person.</td>
<td>Any speculative illiquid security, provided the financial promotion is an excluded communication.</td>
</tr>
</tbody>
</table>

Preliminary assessment of suitability

4.14.4 [G]

(1) A firm which wishes to rely on exemptions 1 (certified high net worth investor) or 3 (self-certified sophisticated investor) as provided under COBS 4.14.3R(4), should note that these exemptions require a preliminary assessment of suitability before promotion of the speculative illiquid security to clients (in addition to other requirements).

(2) 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.

(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 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 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

4.14.5 Subject to §COBS 4.14.2R and §COBS 4.14.3R, a 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 4.14.6R;

(2) if applicable, the date on which the financial promotion was approved; and

(3) statements that comply with §COBS 4.14.9R disclosing all costs, charges and commission.

4.14.6 (1) For the purposes of §COBS 4.14.5R(1), and subject to §COBS 4.14.6R(2) and §COBS 4.14.6R(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.

(3) 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.
The relevant risk warning in COBS 4.14.6R must be:

1. prominent;
2. contained within its own border and with bold 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.

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.

For the purposes of COBS 4.14.5R(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.

There is an illustration of how a firm should comply with COBS 4.14.9R(2) in (2) below.

Where a 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.”

The statements providing the percentage figure in COBS 4.14.9R(1) and the cash sum in COBS 4.14.9R(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.
The statement providing the breakdown of expenditure in COBS 4.14.9(3) should be included in the financial promotion in a clear and prominent way.

The purpose of the statements required by COBS 4.14.9 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 or otherwise to repay the investor’s capital at maturity.

Definitions of certified high net worth and sophisticated investors

A 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:

(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

(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 speculative illiquid securities.

Signature:

Date:
4.14.15 A certified sophisticated investor is an individual who:

(1) 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 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: “

4.14.16 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 seek advice from someone who specialises in advising on speculative illiquid securities.

Signature: 
Date: “

Definition of speculative illiquid security

For the purposes of this section, and subject to ▶ COBS 4.14.18R, a speculative illiquid security is a debenture or preference share which:

(1) has a denomination or minimum investment of £100,000 or less; 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 investments (whether they are to be held directly or indirectly);

(c) buying property or an interest in property (whether it is to be held directly or indirectly);

(d) paying for or funding the construction of property.

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.

(1) This exemption applies where:

(a) the issuer or a member of the issuer’s group uses or purports to use the proceeds of the issue for the purpose of the activities in ▶ COBS 4.14.17R(2)(c) or ▶ (d) (buying or constructing property); and

(b) the relevant property 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 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, sensitive to or dependent on a return generated as a result of the matters referred to in ▶ COBS 4.14.17R(2)(c) or ▶ (d).

(3) This exemption applies where the debenture or preference share is:

(a) issued, or to be issued, by a credit institution;

(b) a non-mainstream pooled investment;

(c) a readily realisable security; or
(d) a P2P agreement.

(4) This exemption applies where the issuer is a property holding vehicle.

4.14.19 R

(1) For the purposes of COBS 4.14.18R(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 (other than property development or construction 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 4.14.18R(1)(b), a general commercial or industrial purpose does not include investment to generate a pooled return.

Guidance on general commercial or industrial purpose

4.14.20 G

(1) COBS 4.14.17R 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 the buying or construction of property.

(2) However, COBS 4.14.18R(1) provides an exemption in cases where the property which is bought or constructed 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.

(3) General commercial or industrial purpose is defined in COBS 4.14.19R.

(4) The effect of the exemption in COBS 4.14.18R(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 construct a property which is used by the issuer or group member for the purposes of its own commercial or industrial activities.

(5) For instance:
   (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, 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.
   (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 4.14.18R(2) applies). That is because it will use the property for its own commercial or industrial activities (generating electricity). However, *firms* should also consider COBS 4.14.18R(2) and the guidance in (6) below.

(6) COBS 4.14.18R(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, sensitive to or dependent on the return generated as a result of the matters referred to in COBS 4.14.17R(2)(c) or (d) (buying or constructing property).

(7) The effect of the above is that where a company issues a *debenture or preference share* for the purpose of 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 project, the exemption in COBS 4.14.18R(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 4.14.18R applies.
Chapter 5

Distance communications
5.1 The distance marketing disclosure rules

Application

5.1.1 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 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 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 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]
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 (R COBS 5.1.1 R to R 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 (R COBS 5.1.1 R to R 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 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 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]
COBS 5 : Distance communications

Section 5.1 : The distance marketing disclosure rules

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]

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]
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 EEA, 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 one or more EEA States.

[Note: articles 12 and 16 of the Distance Marketing Directive]
5.2 E-Commerce

Application

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 or another EEA State.

Information about the firm and its products or services

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, or a person regulated by the equivalent of a designated professional body in another EEA State:
   a. the name of the professional body (including any designated professional body) or similar institution with which it is registered;
   b. the professional title and the EEA State where it was granted;
   c. a reference to the applicable professional rules in the EEA State of establishment 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]

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]
5.2.4  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  An unsolicited commercial communication sent by e-mail by a **firm** established in the *United Kingdom* 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*

5.2.6  **Requirements relating to the placing and receipt of orders**

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 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 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 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 consumer’s EEA State of residence, 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. |
**COBS 5 : Distance communications**

<table>
<thead>
<tr>
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<th>Description</th>
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<tbody>
<tr>
<td>(11)</td>
<td>Details of any specific additional cost to the <strong>consumer</strong> for using a means of distance communication.</td>
</tr>
<tr>
<td>(12)</td>
<td>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 <strong>consumer</strong> may be required to pay (or which may not be returned to the <strong>consumer</strong>) in accordance with those <strong>rules</strong>, as well as the consequences of not exercising the right to cancel or withdraw.</td>
</tr>
<tr>
<td>(13)</td>
<td>The minimum duration of the contract, in the case of services to be performed permanently or recurrently.</td>
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<tr>
<td>(14)</td>
<td>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.</td>
</tr>
<tr>
<td>(15)</td>
<td>Practical instructions for exercising any right to cancel or withdraw, including the address to which any cancellation or withdrawal notice should be sent.</td>
</tr>
<tr>
<td>(16)</td>
<td>The <strong>EEA State</strong> or States whose laws are taken by the <strong>firm</strong> as a basis for the establishment of relations with the <strong>consumer</strong> prior to the conclusion of the contract.</td>
</tr>
<tr>
<td>(17)</td>
<td>Any contractual clause on the law applicable to the contract or on the competent court, or both.</td>
</tr>
<tr>
<td>(18)</td>
<td>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 <strong>firm</strong>, with the agreement of the <strong>consumer</strong>, undertakes to communicate during the duration of the contract.</td>
</tr>
<tr>
<td>(19)</td>
<td>How to complain to the <strong>firm</strong>, whether complaints may subsequently be referred to the <strong>Financial Ombudsman Service</strong> and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.</td>
</tr>
<tr>
<td>(20)</td>
<td>Whether compensation may be available from the <strong>compensation scheme</strong>, or any other named compensation scheme, if the <strong>firm</strong> is unable to meet its liabilities.</td>
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</table>

**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**

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<table>
<thead>
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<tbody>
<tr>
<td>(1)</td>
<td>The identity of the person in contact with the consumer and his link with the firm.</td>
</tr>
<tr>
<td>(2)</td>
<td>A description of the main characteristics of the financial service.</td>
</tr>
<tr>
<td>(3)</td>
<td>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.</td>
</tr>
<tr>
<td>(4)</td>
<td>Notice of the possibility that other taxes and/or costs may exist that are not paid via the firm or imposed by him.</td>
</tr>
<tr>
<td>(5)</td>
<td>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.</td>
</tr>
<tr>
<td>(6)</td>
<td>That other information is available on request and what the nature of that information is.</td>
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[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 and the name of the competent authority that has authorised it;

(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 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 (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 (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 an EEA State, 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 an EEA State.

(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.
6.1.7A  

**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  

[deleted]

### Information about costs and associated charges

6.1.9  

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  

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  

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 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 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 (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 (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 (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 or any other investor-compensation scheme of which the firm is a member (including, if relevant, membership through a branch) or any alternative arrangement provided for in accordance with the Investor Compensation Directive.
(2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the EEA State pursuant to article 2(3) of the Investor Compensation Directive.

(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 EEA State.

[Note: article 10(1) and (2) of the Investor Compensation Directive]

Record keeping: information about the firm and compensation information

6.1.17 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 implement the requirements of the IDD apply.

6.1ZA.1A G For the purposes of COBS 6.1ZA.1R(3) if a rule implements a requirement of the IDD, a note (“Note:”) follows the rule indicating which provision is 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 “EU” for third country investment firms and MiFID optional exemption firms

6.1ZA.3 R Provisions in this section marked “EU” 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 “EU” 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. See https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf]
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 specifying the Member State in which that agent is registered;

(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 Article 25(6) of Directive 2014/65/EU;

(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 a Member State;

(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]

Reference in COBS 6.1ZA.5EU to “Article 25(6) of Directive 2014/65/EU” is to the requirements in COBS 16A.2.1R.

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.

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 specifying the EEA State in which that appointed representative is registered;

(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 3.3.1EU (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

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
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
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

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

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 a Member State 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]
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

(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.9EU 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

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]

(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]

(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

50(1) For the purposes of providing information to clients on all costs and charges pursuant to Article 24(4) of Directive 2014/65/EU, investment firms shall comply with the detailed requirements in paragraphs 2 to 10.

Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.

Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.

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, in accordance with relevant Union legislation.

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 in accordance with relevant Union legislation 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.

50(10) Investment firms shall provide their clients with an illustration showing the cumulative effect of costs on return when providing investment services. Such an illustration shall be provided both on an ex-ante and ex-post basis. Investment firms shall ensure that the illustration meets the following requirements:

(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]
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

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

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

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

The remuneration referred to in this section includes remuneration that is not guaranteed or which is contingent on meeting certain targets.

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.

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, overrides or other enhanced commissions.

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]

Examples of the type of payments made are those for mid-term adjustments, administration fees and cancellation fees.

Insurance distributors fee disclosure: additional requirements

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]
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

(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

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

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 EU 46(2) Investment firms shall, 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.

[Note: article 46(2) 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.5EU, ■ COBS 6.1ZA.8EU, ■ COBS 6.1ZA.9EU, ■ COBS 6.1ZA.2.14EU, and ■ COBS 14.3A.5EU.

Medium of disclosure: MiFID business

6.1ZA.19 EU 46(3) The information referred to in paragraphs 1 and 2 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

(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

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 EU

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

(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

(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

(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 or any other investor-compensation scheme of which the firm is a member (including, if relevant, membership through a branch) or any alternative arrangement provided for in accordance with the Investor Compensation Directive.

(2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the EEA State pursuant to article 2(3) of the Investor Compensation Directive.

(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 EEA State.

[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

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 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.

Requirement to be paid through adviser charges

6.1A.4 R
Except as specified in ■ COBS 6.1A.4AR, ■ COBS 6.1A.4AB R, ■ COBS 6.1A.4AC G, ■ COBS 6.1A.4B R and ■ COBS 6.1A.5AR(1), 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.

6.1A.4A

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

(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).

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.

(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**

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).

**6.1A.5**

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**

(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.
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

‘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 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 or P2P agreements).

‘Other services’ in COBS 6.1A.6R (3) includes:

1. providing information relating to retail investment products, 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

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.

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 In order to meet its responsibilities under the client’s best interests rule and Principle 6 (Customers’ interests), 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.

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).

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.
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.

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.

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.20

Ongoing payment of adviser charges

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 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.

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.
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.

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

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.

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.

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.

A firm may include the information required by the rule on disclosure of total adviser charges in a suitability report.

To comply with the rule on disclosure of total adviser charges 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**

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.
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.

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.

This section does not apply if the retail client is outside the United Kingdom.

(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.

The guidance in COBS 6.1A.5BG is also relevant for the purposes of COBS 6.1B.5R(2).

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  
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  
[deleted]

Distinguishing product and P2P platform charges from adviser charges

6.1B.7  
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  
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.
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.

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.

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:

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).
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.

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.

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.

COBS 6.1B.9(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:

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

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.

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.

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.

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.

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

(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

A firm must determine and use an appropriate charging structure for calculating its consultancy charge for each employer.

6.1C.12

A firm can use a standard charging structure.

6.1C.13

(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

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

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

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.
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

(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.

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

When an employer asks a firm to provide advice to the employer’s employees, the firm:
COBS 6: Information about the firm, its services and remuneration

Section 6.1C: Consultancy charging and remuneration

(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

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

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?

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?

This section does not apply if the employer is outside the United Kingdom.

Interpretation

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

1. Except as specified in COBS 6.1D.6A, 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.

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.

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.

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

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
6.1D.8 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.

6.1D.9 Requirements on firms facilitating the payment of consultancy charges

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 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 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 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 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.
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 A firm must, in good time, provide an employee with sufficient information on the total consultancy charge payable by the employee.

6.1D.12 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 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 6.1E.6 R and 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

6.1.6 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.

6.1.7 R
Other than in ■ COBS 6.1.6 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

6.1.8 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 6.1.10R (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 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 When selecting and using a platform service for the purpose described in 6.1F.1, 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).

This section does not apply if the retail client is outside the United Kingdom.
6.1G Re-registration of title to retail investment products

6.1G.1 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 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.
6.2B Describing advice services

Application

6.2B.1 (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 (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 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 (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.
COBS 6 : Information about the firm, its services and remuneration

Section 6.2B : Describing advice services

6.2B.5

Introduction
This section transposes 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 directly applicable 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.

6.2B.6

Interpretation of rules and guidance: relevant products
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]

6.2B.7

Interpretation of EU provisions: MiFID business
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 “EU” in the course of MiFID business with a retail client in the United Kingdom.

6.2B.8

Interpretation of EU provisions: non-MiFID business
In relation to business that is not MiFID business, a firm must comply with provisions in this section marked “EU” 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.32EU) 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.36EU) 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.29EU) that a firm does not allow a natural person to provide both independent advice and restricted advice.

Interpretation: non-independent advice and restricted advice

This section refers to both “restricted advice” and “non-independent advice”. These terms have the same meaning.

Firms holding themselves out as independent

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]

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).

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

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 EU 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) EU6.2B.15EU 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 EU6.2B.15EU 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 EU6.2B.15EU;
   (2) the investment objectives of the client (EU6.2B.11R(1)); and
   (3) the firm’s close links and relationships with product providers and issuers (EU6.2B.11R(2)).

6.2B.18 EU 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 Article 24(7)(a) of Directive 2014/65/EU. 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]

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.15EU) 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

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.
6.2B.21 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 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.18EU).

6.2B.23 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 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 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 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.
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.

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

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 Article 24(4)(a) of Directive 2014/65/EU 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]

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.

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)).

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

<table>
<thead>
<tr>
<th>Rule</th>
<th>Description</th>
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| 6.2B.33 | (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.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Description</th>
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</table>
| 6.2B.34 | (1) A firm must provide the information required by in 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

<table>
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<tr>
<th>Rule</th>
<th>Description</th>
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| 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

<table>
<thead>
<tr>
<th>Rule</th>
<th>Description</th>
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| 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.

  (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 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 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 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 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 (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
Under the territorial application rules in COBS 1, the rules in this section apply to:

(a) a UK firm's business carried on from an establishment in an EEA State other than the United Kingdom for a retail client in the United Kingdom unless, if the office from which the activity is carried on were a separate person, the activity:

(i) would fall within the overseas persons exclusion in article 72 of the Regulated Activities Order; or

(ii) would not be regarded as carried on in the United Kingdom.

(b) a firm's business carried on from an establishment in the United Kingdom carried on for a client in an other EEA state.

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 EEA 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).
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.

**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).
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]
COBS 6 : Information about the firm, its services and remuneration

[deleted]
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Calculating commission equivalent

This table forms part of COBS 6.4.6 E.

<table>
<thead>
<tr>
<th>Calculating commission equivalent</th>
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<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

### 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

<table>
<thead>
<tr>
<th>Part B: Benefits</th>
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<tbody>
<tr>
<td>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).</td>
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</table>

<table>
<thead>
<tr>
<th>Part C: Services</th>
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<tbody>
<tr>
<td>4. Services include benefits which are not indirect benefits within the table in COBS 2.3.15 G.</td>
</tr>
<tr>
<td>5. The following services should be included:</td>
</tr>
<tr>
<td>(a) office accommodation and equipment, including telephone, photocopying and fax;</td>
</tr>
<tr>
<td>(b) loans where a commercial rate of interest is not charged, including commission equivalent advances overdue for repayment;</td>
</tr>
<tr>
<td>(c) general stationery and mailing or distribution costs;</td>
</tr>
<tr>
<td>(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);</td>
</tr>
<tr>
<td>(e) clerical and administrative support;</td>
</tr>
<tr>
<td>(f) business insurance cover, including professional indemnity and fidelity guarantee;</td>
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<tr>
<td>(g) recruitment;</td>
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<tr>
<td>(h) compliance monitoring;</td>
</tr>
<tr>
<td>(i) client services;</td>
</tr>
<tr>
<td>(j) business planning services;</td>
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<tr>
<td>(k) line management.</td>
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<tr>
<td>6. To put a value on these services, the following costs should be included:</td>
</tr>
<tr>
<td>(a) all overheads attributable to a particular cost item (for example, the cost of a compliance official);</td>
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<tr>
<td>(b) salary costs pro rata if individuals are only engaged part-time on relevant business;</td>
</tr>
<tr>
<td>(c) rent and associated premises costs at an appropriately reduced rate if the premises are also used for other business activities;</td>
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<tr>
<td>(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);</td>
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<tr>
<td>(e) only the marginal additional compliance costs of ensuring that representatives and their support and training material comply with relevant rules;</td>
</tr>
<tr>
<td>(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);</td>
</tr>
<tr>
<td>(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;</td>
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</table>
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

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<td>(b)</td>
<td>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.</td>
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<tr>
<td>13.</td>
<td>(a) When a representative receives a salary, or other payment unrelated to volume or sales:</td>
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<td>(i) this should be amalgamated with the cost of benefits and services; and</td>
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<td>(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.</td>
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<td>(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.</td>
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<td>14.</td>
<td>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.</td>
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<td>15.</td>
<td>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.</td>
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<td>Payments to associates</td>
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<td>16.</td>
<td>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:</td>
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<td>(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</td>
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<td>(b) the cash payments actually paid by the firm, plus the value of services provided.</td>
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Chapter 7

Insurance distribution
7.1 Application

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 EEA State.

[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 COBS 6.1ZA.16DR (cross-selling).

[Note: article 1(4) of the IDD]

7.3.7 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

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

(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]

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

(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

(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

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

(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.
Client agreements (MiFID provisions)

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 “EU” apply to MiFID optional exemption firms as if they were rules.

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 EU 58 Investment firms providing any investment service or the ancillary service referred to in Section B(1) of Annex I to Directive 2014/65/EC 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.

The written agreement shall set out the essential rights and obligations of the parties, and shall include the following:

(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 Section B(1) of Annex I to Directive 2014/65/EC 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** EU 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** EU 46(2) Investment firms shall, 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.

[Note: article 46(2) of the MiFID Org Regulation]

**8A.1.7** EU 46(3) The information referred to in paragraphs 1 and 2 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 47(1) Articles 47 to 50 of the MiFID Org Regulation require a firm to provide a client with information about:

- (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.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]
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]

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]

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

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.

9.1A 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

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

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.

9.4 [deleted]
COBS 9 : Suitability (including basic advice) (other than MiFID and insurance-based...)

Section 9.1 : Application and purpose provisions

Life policies for professional clients

9.1.5 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 implement the requirements of the IDD.

9.1.6 If a rule implements a requirement of the IDD, a Note (“Note:”) follows the rule indicating which provision is 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) contain further rules implementing the IDD.

9.1.7 [deleted]

Related rules

9.1.8 For a firm making personal recommendations in relation to pensions, COBS 19 contains additional provisions relevant to assessing suitability and the contents of suitability reports.

9.1.9 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

Assessing suitability: the obligations

9.2.1 (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 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 (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 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 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 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 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 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 [deleted]
9.2.9 Friendly society life policies

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 (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 (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 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.
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.

(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.

   (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

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.
9.4 Suitability reports

Providing a suitability report

9.4.1 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 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 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.

9.4.3 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 EEA 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  
A firm must provide the suitability report to the client:

1. in the case of a life policy, before the contract is concluded; or

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; 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 [deleted]

9.4.6  
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]

**Contents**

9.4.7  
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  
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]
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)

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

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.
9.5 Record keeping and retention periods for suitability records

9.5.1 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 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 or stakeholder pension scheme, five years; and
3. [deleted]
4. in any other case, three years.

9.5.3 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

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?

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

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
(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 acknowledgement should be in the client’s own words.

Further personal recommendations given to an insistent client

9.5A.5
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
(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
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 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 A firm is permitted to maintain more than one range of stakeholder products.

9.6.3 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 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 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.

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**9.6.6** [deleted]

**9.6.6A** [deleted]

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](#)).

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**9.6.7** [deleted]

**9.6.8** [deleted]

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](#)).

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**Sales process**

**9.6.9** 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** 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

(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

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

*COBS 9 Annex 2* gives *guidance* on the steps a *firm* could take to help it meet these suitability obligations.

### 9.6.14

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 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.

9.6.16 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 (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 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 (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  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  (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.B.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 clients 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-
9. 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 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;
then 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 clients 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 www.moneyadviceservice.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 he should get further advice if has 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. See https://www.esma.europa.eu/system/files_force/library/esma35-43-869-_fr_on_guidelines_on_suitability.pdf?download=1.

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 “EU” for third country investment firms and MiFID optional exemption firms

9A.1.2 R Provisions in this chapter marked “EU” 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 “EU” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

Effect of provisions marked “EU” for the firms distributing insurance-based investment products

9A.1.4 R Provisions in this chapter marked “EU” 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 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 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 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 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 EU

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 EU

9(1) For the purposes of providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, 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 Article 20(1) of Directive (EU) 2016/97, 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 Article 30(1) or (2) of Directive (EU) 2016/97 has already been obtained pursuant to Article 20 of Directive (EU) 2016/97, 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

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 Section 1 of Annex II to Directive 2014/65/EU, 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

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

17(1) For the purposes of Article 30(1) and (2) of Directive (EU) 2016/97, 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

5A.2.7 EU 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, 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 EU 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

5A.2.8 EU 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 EU 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

5A.2.9 EU 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

(d) taking steps, as appropriate, to ensure the consistency of client information, such as by considering whether there are obvious inaccuracies in the information provided by clients.

[Note: article 54(7) of the MiFID Org Regulation]

Reliability of information: insurance-based investment products

10 Insurance 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

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

55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of Article 25(2) and (3) of Directive 2014/65/EU.

[Note: article 55(2) of the MiFID Org Regulation]
Discouraging the provision of information: insurance-based investment products

9A.2.11A EU

17(2) The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of Article 30(1) and (2) of Directive (EU) 2016/97.

[Note: article 17(2) of the IDD Regulation]

Reliance on information: MiFID business

9A.2.12 EU

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 EU

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 EU

54(8) Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under Article 25(2) of Directive 2014/65/EU, 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 EU

9(5) Where the insurance intermediary or insurance undertaking does not obtain the information required under Article 30(1) of Directive (EU) 2016/97, 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
**Identifying the subject of a suitability assessment: MiFID business**

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 Section 2 of Annex II to Directive 2014/65/EU 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(6) of the MiFID Org Regulation]

**Identifying the subject of a suitability assessment: insurance-based investment products**

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**

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]

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**

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.

[Note: article 54(11) of the MiFID Org Regulation]

**Switching: insurance-based investment products**

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 9(7) of the IDD Regulation]

**Adequate policies and procedures: MiFID business**

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(9) of the MiFID Org Regulation]

**Unsuitability: MiFID business**

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(10) of the MiFID Org Regulation]

**Unsuitability: insurance-based investment products**

9(6) When providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, 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 9(6) 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 [EU] 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: second paragraph of article 54(1) of the MiFID Org Regulation]

Automated or semi-automated systems: insurance-based investment products

9A.2.24 [EU] 12 The insurance intermediary’s or insurance undertaking’s responsibility to perform the suitability assessment in accordance with Article 30(1) of Directive (EU) 2016/97 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 12 of the IDD Regulation]
9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability: MiFID business

9A.3.1 EU 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 Article 25(2) of Directive 2014/65/EU. 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: first paragraph of article 54(1) of the MiFID Org Regulation]

9A.3.1A EU 11 Insurance 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 Article 30(1) of Directive (EU) 2016/97. 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 11 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.
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.

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.

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.

Providing a suitability report: MiFID business

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.

Providing a suitability report: insurance-based investment products

14(1) When providing advice on the suitability of an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, 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 14(1) to (3) 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 EU
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 52(5) of the MiFID Org Regulation]

9A.3.9 EU
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 EU
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 14(4) 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 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 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 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 Article 30(1) and (2) of Directive (EU) 2016/97. 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 19(1) of the IDD Regulation]

Record-keeping obligations for the assessment of suitability: insurance-based investment products

9A.4.4 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

10.1.2  This chapter applies to a firm which arranges or deals in relation to a non-readily realisable security, derivative or a 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.

10.1.4  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 (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 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 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 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 When assessing appropriateness, a firm may use information it already has in its possession.
Knowledge and experience

10.2.6 ▶ 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 ▶ 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 ▶ 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 ▶ (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:

- the nature of the client’s contractual relationships with the borrower and the firm;
- the client’s exposure to the credit risk of the borrower;
- that all capital invested in a P2P agreement or P2P portfolio is at risk;
- that P2P agreements or P2P portfolios are not covered by FSCS;
- that returns may vary over time;
- that entering into a P2P agreement or investing in a P2P portfolio is not comparable to depositing money in a savings account;
- 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;
- 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;
- 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;

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;

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

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 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 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 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 (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 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 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 (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 [deleted]

Independent valuation systems

10.5.5 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 EEA State.
10.6 When a firm need not assess appropriateness

10.6.1 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 [deleted]
10.7 Record keeping and retention periods for appropriateness records

10.7.1 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 The firm must retain its records relating to appropriateness for a minimum of five years.
COBS 10: Appropriateness (for non-MiFID and non-insurance-based…)

Section 10.7: Record keeping and retention periods for appropriateness records
Appropriateness (for non-advised services) (MiFID provisions)

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. See [https://www.esma.europa.eu/sites/default/files/library/2015-1787_-_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf]]

Application

10A.1.1 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.1.2 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 GEN 2.2.22AR (Reliance on other investment firms: MiFID and equivalent business).

Effect of provisions marked EU

10A.1.3 The effect of GEN 2.2.22AR is that provisions in this chapter marked “EU” 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 Provisions in this chapter marked “EU” 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 EU** 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 Article 25(3) of Directive 2014/65/EU 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 EU** 15 Without prejudice to the fact that, in accordance with Article 20(1) of Directive (EU) 2016/97, any contract proposed shall be consistent with the
COBS 10A : Appropriateness
(for non-advised services) (MiFID and insurance-based...)

Section 10A.2 : Assessing appropriateness: the obligations

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 Article 30(2) of Directive (EU) 2016/97 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 EU 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]

Information regarding a client's knowledge and experience: insurance-based investment products

10A.2.4A EU 17(1) For the purposes of Article 30(1) and (2) of Directive (EU) 2016/97, 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 Article 30(1) or (2) of Directive (EU) 2016/97 has already been obtained pursuant to Article 20 of Directive (EU) 2016/97, 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 EU 55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of Article 25(2) and (3) of Directive 2014/65/EU.

[Note: article 55(2) of the MiFID Org Regulation]

Discouraging the provision of information: insurance-based investment products

10A.2.5A EU 17(2) The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of Article 30(1) and (2) of Directive (EU) 2016/97.

[Note: article 17(2) of the IDD Regulation]

Reliance on information: MiFID business

10A.2.6 EU 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 EU 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

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  
(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  
(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  
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

(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

(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
(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 Commission has, at the request of a competent authority, adopted an affirmative equivalence decision in accordance with the requirements and procedure in article 25(4) of MiFID.

[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. The guidelines can be found here: https://www.esma.europa.eu/sites/default/files/library/2015-1787_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf].

[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. The guidelines can be found here: https://eiopa.europa.eu/Publications/Guidelines/EIOPA-17-651-IDD_guidelines_execution_only_EN.pdf].

Other non-complex financial instruments

57 A financial instrument which is not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU shall be considered as non-complex for the purposes of Article 25(4)(a)(vi) of Directive 2014/65/EU if it satisfies the following criteria:

(a) it does not fall within Article 4(1)(44)(c) of, or points (4) to (11) of Section C of Annex I to Directive 2014/65/EU;

(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

16 An insurance-based investment product shall be considered as non-complex for the purposes of Article 30(3)(a)(ii) of Directive (EU) 2016/97 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 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, insurance-based investment product or specific transaction.

[Note: recital 85 to MiFID]

10A.5.2 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 (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.
COBS 10A : Appropriateness (for non-advised services) (MiFID and insurance-based...)

10A.6 Assessing appropriateness: when a firm need not assess appropriateness due to suitability assessment

10A.6.1 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 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 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 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 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 Article 30(1) and (2) of Directive (EU) 2016/97. 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 Article 30(2) of Directive (EU) 2016/97, 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

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 This chapter applies to a firm.

(1) [deleted]

(2) [deleted]

11.1.2 Save as may be provided in the relevant sections, in this chapter, provisions marked "EU" apply to a firm which is not a MiFID investment firm as if they were rules.

11.1.3 [deleted]

Application of section on personal account dealing

11.1.4 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 The EEA territorial scope rule modifies the default territorial scope of the section on personal account dealing (see COBS 11.7 and COBS 11.7A) to the extent necessary to be compatible with European law (see paragraph 1.1G of Part 3 of COBS 1 Annex 1). This means that the section on personal account dealing also applies to passported activities carried on by a UK MiFID investment firm or a UK UCITS management company from a branch in another EEA state, but does not apply to the UK branch of an EEA MiFID investment firm in relation to its MiFID business or of an EEA UCITS management company in relation to activities it is entitled to carry on in the United Kingdom under the UCITS Directive.

Disapplication of best execution for non-financial spreads

11.1.6 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

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 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 and an incoming EEA AIFM branch, in accordance with COBS 18.5A.3R.

11.2.-6 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 In accordance with COBS 18.5A.8R, only the following provisions of this section apply to a full-scope UK AIFM and an incoming EEA AIFM branch:

■ 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 A firm to which this section applies may comply with its obligations under this section by complying with the rules in COBS 11.28 (Best execution for UCITS management companies).
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.

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.

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.

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. The paper can be found at https://www.esma.europa.eu/sites/default/files/library/2015/11/07_320.pdf]

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.
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.

11.2.6

Best execution criteria

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

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.

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 **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 **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 **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 **A firm must not structure or charge its commissions in such a way as to discriminate unfairly between execution venues.**

11.2.13 **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 **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.**
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.

(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.

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.

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

(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.

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.
11.21 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

11.22 A firm must provide appropriate information to its clients on its order execution policy.

11.23 (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.

11.23A A full-scope UK AIFM and an incoming EEA AIFM branch 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.

11.24 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

11.25 (1) A firm must obtain the prior consent of its clients to the execution policy.

(2) [deleted]

(3) [deleted]
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

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

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

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

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.

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.

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  [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

(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 “EU”; and

(b) COBS 11 Annex 1EU.

(2) The following provisions do not apply to MiFID optional exemption firm’s business:

(a) the part of the first sub-paragraph of article 65(6) to the MiFID Org Regulation (reproduced at COBS 11.2A.34EU) that reads:

“In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU.”; and

(b) COBS 11 Annex 1EU.

(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

(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.2 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 EU Article 64 of the MiFID Org Regulation sets out best execution criteria.

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 Article 27(1) of Directive 2014/65/EU:
(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 Article 27(1) of Directive 2014/65/EU 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 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 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 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

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]

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]

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

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]

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]

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]
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]

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]

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]

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]

(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]

(1) A firm must obtain the prior consent of its clients to the execution policy.

[Note: article 27(5) of MiFID]
11.2A.24 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]

11.2A.25 Article 66 of the MiFID Org Regulation sets out requirements concerning execution policies

66 (1) Investment firms shall review, at least on an annual basis execution policy established pursuant to Article 27(4) of Directive 2014/65/EU, 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 Article 27(1) of Directive 2014/65/EU, 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 Article 24(9) of Directive 2014/65/EU 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 Article 24(9) of Directive 2014/65/EU and its implementing measures, 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. The summary shall also provide a link to the most recent execution quality data published in accordance with Article 27(3) of Directive 2014/65/EU for each execution venue listed by the investment firm in its execution policy.

(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 published in accordance with:

(1) COBS 11.2A.38G;

(2) COBS 11.2A.39R;

(3) COBS 11.2C; and

(4) by other internal analyses conducted by investment firms.

[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]
### Section 11.2A: Best execution – MiFID provisions

#### 11.2A.31

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 the information published in accordance with:
   
   (a) COBS 11.2A.38G;
   
   (b) COBS 11.2A.39R; and
   
   (c) COBS 11.2C.

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

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

In order to obtain the best execution for a client, a firm should compare and analyse relevant data, including that made public in accordance with COBS 11.2A.38G, COBS 11.2C and article 27(3) of MiFID and respective implementing measures.

[Note: recital 107 to the MiFID Org Regulation]

### Duty of portfolio managers, receivers and transmitters to act in client’s best interest

**Article 65 of the MiFID Org Regulation** sets out the duty of firms carrying out certain activities to act in the best interests of the client.

65(1) Investment firms, when providing portfolio management, shall comply with the obligation under Article 24(1) of Directive 2014/65/EU 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.

65(2) Investment firms, when providing the service of reception and transmission of orders, shall comply with the obligation under Article 24(1) of Directive 2014/65/EU to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

65(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).

65(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. In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU.

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 Article 27 of Directive 2014/65/EU shall apply.

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]
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 published in accordance with:

1. COBS 11.2A.38G;
2. COBS 11.2A.39R;
3. COBS 11.2C; and
4. by internal analysis conducted by investment firms.

[Note: recital 100 to the MiFID Org Regulation]

Providing information to clients on order execution

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]

Publishing information on execution quality

Execution venues (other than market makers and other liquidity providers to which COBS 11.2C applies) are reminded of the need to comply with the following provisions:

1. MAR 5.3.1A R(5);
2. MAR 5A.4.2R(3);
3. MAR 6.3A.1R; and
4. paragraph 4C of the Schedule to the Recognition Requirements Regulations.

[Note: article 27(3) of MiFID and MiFID RTS 27]

In accordance with the requirements of COBS 11 Annex 1EU, a firm which executes client orders must summarise and make public on an annual basis, for each class of financial instruments, the top five execution venues in terms of trading volumes, where they executed client orders in the preceding year, together with information on the quality of execution obtained.

[Note: article 27(6) of MiFID and MiFID RTS 28]
## 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 or an EEA 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]
(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.

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]
A management company must not structure or charge its commission in a way that discriminates unfairly between execution venues.

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.

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.

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]

(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]

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.

(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)).
11.2B.18  (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  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  (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  (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.

11.2B.22  (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:

(a) relevant data published in accordance with COBS 11.2A.39R, COBS 11.2B.36R, COBS 11.2C and the provisions referred to in COBS 11.2B.30G; or

(b) other internal analyses conducted by the management company.

11.2B.23  
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  
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.24  
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  
(1) A management company of an ICVC that is a UCITS scheme, or an EEA 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  
(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 the information published in accordance with
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.

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.

A management company should compare and analyse relevant data, including that made public in accordance with:

1. MAR 5.3.1AR(5) (Functioning of an MTF);
2. MAR 5A.4.2R(3) (Functioning of an OTF);
3. MAR 6.3A.1R (Quality of execution); and
4. paragraph 4C of the Schedule to the Recognition Requirements Regulations.

Information requirements

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.

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.33 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.
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.

(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.

(1) Where a management company executes scheme orders or selects other firms to provide order execution services, it must summarise and make public, on an annual basis, for each type of financial instrument:
   a. the top five execution venues or investment firms where it transmitted or placed orders for execution in terms of trading volumes in the preceding year; and
   b. information on the quality of execution obtained.

(2) The information must be consistent with the information published in accordance with COBS 11 Annex 1EU (Regulatory technical standard 28) (which applies as rules in accordance with COBS 18.5B.2R).

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 A market maker or other liquidity provider must make available the data detailed in ▬ COBS 11.2C.2R to the public in the following manner:

(1) at least on an annual basis; and

(2) without any charges.

11.2C.2 R ▬ COBS 11.2C.1R applies to data relating to the quality of execution of transactions by that market maker or other liquidity provider, including details about price, costs, speed and likelihood of execution for individual financial instruments.

[Note: article 27(3) of MiFID and MiFID RTS 27]
11.3 Client order handling

General principles

11.3.1 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 or EEA UCITS scheme it manages.

[Note: article 27(1) first paragraph of the UCITS implementing Directive]

11.3.1A Subject to (2) and (3) in this chapter provisions marked “EU” apply to a firm’s business other than MiFID business as if they were rules.

(2) Provisions marked “EU” which derive from recitals to MiFID or the MiFID Org Regulation apply to all firms as guidance.

(3) COBS 11.3.4AEU, which reproduces article 67(2) of the MiFID Org Regulation, does not apply to a UCITS management company.

11.3.2 [deleted]

11.3.2A Article 67(1) of the MiFID Org Regulation requires firms to satisfy conditions when carrying out client orders.

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 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]

11.3.4A EU Article 67(2) of the MiFID Org Regulation places requirements on firms which are responsible for overseeing and arranging the settlement of an executed order.

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.

11.3.5 R [deleted]

11.3.5A EU Article 67(3) of the MiFID Org Regulation sets out requirements concerning the use of information relating to pending client orders.

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]
Section 11.3 : Client order handling

R11.3.7

EU11.3.7A

R11.3.8

EU11.3.8A

R11.3.9

EU11.3.9A

R11.3.10

EU11.3.10A

Aggregation and allocation of orders

11.3.7 R

[deleted]

11.3.7A EU

Article 68(1) of the MiFID Org Regulation sets out requirements to be met where a firm carries out a client order or a transaction for own account in aggregation with another client order.

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.

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 11.3.7AEU, is in sufficiently precise terms.

[Note: article 28(1) of the UCITS implementing Directive]

11.3.8 R

[deleted]

11.3.8A EU

Article 68(2) of the MiFID Org Regulation sets out requirements concerning partial execution of aggregated client orders.

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]

11.3.9A EU

Article 69(1) of the MiFID Org Regulation sets out requirements concerning aggregated transactions.

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 EU

Article 69(2) of the MiFID Org Regulation sets out allocation priorities where a firm aggregates a client order in accordance with its allocation policy referred to in article 68(1)(c) (see ■ COBS 11.3.7AEU).
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).

Article 69(3) of the MiFID Org Regulation introduces requirements for order allocation policy, referred to in article 68(1)(c) (see COBS 11.3.7AEU), where transactions for own account are executed in combination with client orders.

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.

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]

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.

Transposition of client order handling provisions in the UCITS Implementing Directive

(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 have been used to transpose provisions of the UCITS implementing Directive, as set out in the table below:
<table>
<thead>
<tr>
<th>MiFID Org Regulation Provision</th>
<th>COBS 11.3 provision</th>
<th>UCITS implementing Directive transposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>article 67(1)</td>
<td>COBS 11.3.2AEU</td>
<td>article 27(1) second paragraph</td>
</tr>
<tr>
<td>article 67(3)</td>
<td>COBS 11.3.5AEU</td>
<td>article 27(2)</td>
</tr>
<tr>
<td>article 68(1)</td>
<td>COBS 11.3.7AEU, as modified by COBS 11.3.7BR</td>
<td>article 28(1)</td>
</tr>
<tr>
<td>article 68(2)</td>
<td>COBS 11.3.8AEU</td>
<td>article 28(2)</td>
</tr>
<tr>
<td>article 69(1)</td>
<td>COBS 11.3.9AEU</td>
<td>article 28(3)</td>
</tr>
<tr>
<td>article 69(2)</td>
<td>COBS 11.3.10AEU</td>
<td>article 28(4)</td>
</tr>
</tbody>
</table>
11.4 Client limit orders

Obligation to make unexecuted client limit orders public

11.4-1 R In this chapter provisions marked “EU” apply to a firm’s business other than MiFID business as if they were rules.

11.4 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 [deleted]

11.4.3A EU Article 70(1) of the MiFID Org Regulation provides when client limit orders shall be considered as being available to the public.

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 conditions as referred to in Article 28(2) of Directive 2014/65/EU 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 data reporting services provider located in one Member State 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

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]

[deleted]
11.5A Record keeping: client orders and transactions

11.5A.1 R

(1) Subject to (2), in this chapter provisions marked “EU” apply to a firm’s business other than MiFID business as if they were rules.

(2) Provisions in this chapter which are marked “EU” do not apply to corporate finance business carried on by a firm which is not a MiFID investment firm.

11.5A.2 EU

Article 74 of the MiFID Org Regulation, together with Section 1 of Annex IV to that Regulation which is reproduced at COBS 11.5A.4EU, makes provision for record keeping of initial orders from clients.

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.4EU] 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.

11.5A.3 EU

Article 75 of the MiFID Org Regulation, together with Section 2 of Annex IV to that Regulation which is reproduced at COBS 11.5A.5EU, makes provision for record keeping in relation to transactions and order processing.

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.5EU].

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.

11.5A.4 EU

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
### Section 11.5A: Record keeping: client orders and transactions

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision</td>
</tr>
<tr>
<td>2.</td>
<td>A designation to identify the algorithm (Algo ID) responsible within the investment firm for the investment decision;</td>
</tr>
<tr>
<td>3.</td>
<td>B/S indicator;</td>
</tr>
<tr>
<td>4.</td>
<td>Instrument identification</td>
</tr>
<tr>
<td>5.</td>
<td>Unit price and price notation</td>
</tr>
<tr>
<td>6.</td>
<td>Price</td>
</tr>
<tr>
<td>7.</td>
<td>Price multiplier</td>
</tr>
<tr>
<td>8.</td>
<td>Currency 1</td>
</tr>
<tr>
<td>9.</td>
<td>Currency 2</td>
</tr>
<tr>
<td>10.</td>
<td>Initial quantity and quantity notation</td>
</tr>
<tr>
<td>11.</td>
<td>Validity period</td>
</tr>
<tr>
<td>12.</td>
<td>Type of the order</td>
</tr>
<tr>
<td>13.</td>
<td>Any other details, conditions and particular instructions from the client</td>
</tr>
<tr>
<td>14.</td>
<td>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 under the standards on clock synchronisation under Article 50(2) Directive 2014/65/EU.</td>
</tr>
</tbody>
</table>

**Annex IV Section 2 of the MiFID Org Regulation** makes provision for record keeping of transactions and order processing.

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Name and designation of the client</td>
</tr>
<tr>
<td>2.</td>
<td>Name and designation of any relevant person acting on behalf of the client</td>
</tr>
<tr>
<td>3.</td>
<td>A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision</td>
</tr>
<tr>
<td>4.</td>
<td>A designation to identify the Algo (Ago ID) responsible within the investment firm for the investment decision</td>
</tr>
<tr>
<td>5.</td>
<td>Transaction reference number</td>
</tr>
<tr>
<td>6.</td>
<td>A designation to identify the order (Order ID)</td>
</tr>
<tr>
<td>7.</td>
<td>The identification code of the order assigned by the trading venue upon receipt of the order</td>
</tr>
<tr>
<td>8.</td>
<td>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 specified “aggregated_X” with X representing the number of clients whose orders have been aggregated</td>
</tr>
<tr>
<td>9.</td>
<td>The segment MIC code of the trading venue to which the order has been submitted</td>
</tr>
<tr>
<td>10.</td>
<td>The name and other designation of the person to whom the order was transmitted</td>
</tr>
<tr>
<td>11.</td>
<td>Designation to identify the Seller &amp; the Buyer</td>
</tr>
<tr>
<td>12.</td>
<td>The trading capacity</td>
</tr>
<tr>
<td>13.</td>
<td>A designation to identify the Trader (Trader ID) responsible for the execution</td>
</tr>
</tbody>
</table>
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 under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU.
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 any events affecting an order. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU.
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

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

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]
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.

The requirements of this section are without prejudice to the prohibition under article 14(c) of the Market Abuse Regulation.

For the purposes of COBS 11.7.1R (1)(c), any other obligation of the firm under MiFID refers to a firm’s obligations under the regulatory system that are not owed to a customer and any of the firm’s obligations under another EEA States’ implementation of MiFID where it operates a branch in the EEA.

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

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 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 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 This chapter applies to a firm in relation to its MiFID, equivalent third country or optional exemption business.

11.7A.2 (1) Subject to (2), in this chapter provisions marked “EU” 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 marked “EU” 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 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 EU Article 28 of the MiFID Org Regulation sets out the scope of personal transactions.

28 For 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.
Article 29 of the MiFID Org Regulation sets out detailed provision concerning personal transactions.

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 Directive 2014/65/EU.

(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 a Member 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.

11.7A.6

(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 not 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)

COMMISSION DELEGATED REGULATION (EU) …/… of 8.6.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,


Whereas:

(1) It is essential to enable the public and investors to evaluate the quality of an investment firm’s execution practices and to identify the top five execution venues in terms of trading volumes where investment firms executed client orders in the preceding year. In order to make meaningful comparisons and analyse the choice of top five execution venues it is necessary that information is published by investment firms specifically in respect of each class of financial instruments. In order to be able to fully evaluate the order flow of client orders to execution venues, investors and the public should be able to clearly identify if the investment firm itself was one of the top five execution venues for each class of financial instrument.

(2) In order to fully assess the extent of the quality of execution being obtained on execution venues used by investment firms to execute client orders, including execution venues in third countries, it is appropriate that investment firms publish information required under this Regulation in relation to trading venues, market makers or other liquidity providers or any entity that performs a similar function in a third country to the functions performed by any of the foregoing.

(3) In order to provide precise and comparable information, it is necessary to set out classes of financial instruments based on their characteristics relevant for publication purposes. A class of financial instruments should be narrow enough to reveal differences in order execution behaviour between classes but at the same time broad enough to ensure that the reporting obligation on investment firms is proportionate. Given the breadth of the equity class of financial instruments, it is appropriate to divide this class into subclasses based on liquidity. As liquidity is an essential factor governing execution behaviours and as execution venues are often competing to attract flows of the most frequently traded stocks, it is appropriate that equity instruments are classified according to their liquidity as determined under the tick size regime as set out in Directive 2014/65/EU of the European Parliament and the Council.

(4) When publishing the identity of the top five execution venues on which they execute client orders it is appropriate for investment firms to publish information on the volume and number of orders executed on each execution venue, so that investors may be able to form an opinion as to the flow of client orders from the firm to execution venue. Where, for one or several classes of financial instruments, an investment firm only executes a very small number of orders, information on the top five execution venues would not be very meaningful nor representative of order execution arrangements. It is therefore appropriate to require investment firms to clearly indicate the classes of financial instruments for which they execute a very small number of orders.

(5) To prevent potentially market sensitive disclosures on the volume of business being conducted by the investment firm, the volume of execution and the number of executed orders should be expressed as a percentage of the investment firm’s total execution volumes and total number of executed orders in that class of financial instrument, respectively, rather than as absolute values.
(6) It is appropriate to require investment firms to publish information which is relevant to their order execution behaviour. To ensure that investment firms are not held accountable for order execution decisions for which they are not responsible, it is appropriate for investment firms to disclose the percentage of orders executed on each of the top five execution venues where the choice of execution venue has been specified by clients.

(7) There are several factors which may potentially influence the order execution behaviour of investment firms such as close links between investment firms and execution venues. Given the potential materiality of these factors it is appropriate to require analysis of such factors in assessing the quality of execution obtained on all execution venues.

(8) The different order types can be an important factor in explaining how and why investment firms execute orders on a given execution venue. It may also impact the way an investment firm will set its execution strategies, including programming of smart order routers to meet the specific objectives of those orders. It is therefore appropriate that a distinction between the different categories of order types be clearly marked in the report.

(9) In order to properly analyse information it is important that users are in a position to differentiate between execution venues used for professional client orders and execution venues used for retail client orders, given the notable differences in how investment firms obtain the best possible result for retail clients as compared to professional clients, namely that investment firms must predominantly assess the factors of price and cost when executing orders from retail clients. Therefore it is appropriate that information on the top five execution venues be provided separately for retail clients and for professional clients respectively, permitting a qualitative assessment to be made of the order flow to such venues.

(10) In order to comply with the legal obligation of best execution, investment firms, when applying the criteria for best execution for professional clients, will typically not use the same execution venues for securities financing transactions (SFTs) and other transactions. This is because the SFTs 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 SFTs are typically defined bilaterally between the counterparties ahead of the execution. Therefore, the choice of execution venues for SFTs 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. It is therefore appropriate that investment firms summarise and make public the top five execution venues in terms of trading volumes where they executed SFTs in a separate report so that that a qualitative assessment can be made of the order flow to such venues. Due to the specific nature of SFTs, and given that their large size would likely distort the more representative set of client transactions (namely, those not involving SFTs), it is also necessary to exclude them from the tables concerning the top five execution venues on which investment firms execute other client orders.

(11) It is appropriate that investment firms should publish an assessment of quality of execution obtained on all venues used by the firm. This information will provide a clear picture of the execution strategies and tools used to assess the quality of execution obtained on those venues. This information will also allow investors to assess the effectiveness of the monitoring carried out by investment firms in relation to those execution venues.

(12) In specifically assessing the quality of execution obtained on all execution venues in relation to cost, it is appropriate that an investment firm also performs an analysis of the arrangements it has with these venues in relation to payments made or received and to discounts, rebates or non-monetary benefits received. Such an assessment should also allow the public to consider how such arrangements impact the costs faced by the investor and how they comply with Article 27(2) of Directive 2004/65/EC.

(13) It is also appropriate to determine the scope of such publication and its essential features, including the use that investment firms make of the data on execution quality available from execution venues under Commission Delegated Regulation (EU) 2017/575.

(14) Information on identity of execution venues and on the quality of execution should be published annually and should refer to order execution behaviour for each class of financial instruments in order to capture relevant changes within the preceding calendar year.

(15) Investment firms should not be prevented from adopting an additional level of reporting which is more granular, provided that in such case the additional report complements and does not replace what is required under this Regulation.
(16) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

(17) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(18) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

HAS ADOPTED THIS REGULATION

Article 1 Subject matter

This Regulation lays down rules on the content and the format of information to be published by investment firms on an annual basis in relation to client orders executed on trading venues, systematic internalisers, market makers or other liquidity providers or entities that perform a similar function to those performed by any of the foregoing in a third country.

Article 2 Definitions

(a) ‘Passive order’ means an order entered into the order book that provided liquidity;
(b) ‘Aggressive order’ means an order entered into the order book that took liquidity;
(c) ‘Directed order’ means an order where a specific execution venue was specified by the client prior to the execution of the order.

Article 3 Information on the top five execution venues and quality of execution obtained

1. Investment firms shall publish the top five execution venues in terms of trading volumes for all executed client orders per class of financial instruments referred to in Annex I. Information regarding retail clients shall be published in the format set out in Table 1 of Annex II and information regarding professional clients shall be published in the format set out in Table 2 of Annex II. The publication shall exclude orders in Securities Financing Transactions (SFTs) and shall contain the following information:

(a) class of financial instruments;
(b) venue name and identifier;
(c) volume of client orders executed on that execution venue expressed as a percentage of total executed volume;
(d) number of client orders executed on that execution venue expressed as a percentage of total executed orders;
(e) percentage of the executed orders referred to in point (d) that were passive and aggressive orders;
(f) percentage of orders referred to in point (d) that were directed orders;
(g) confirmation of whether it has executed an average of less than one trade per business day in the previous year in that class of financial instruments.

2. Investment firms shall publish the top five execution venues in terms of trading volumes for all executed client orders in SFTs for class of financial instruments referred to in Annex I in the format set out in Table 3 of Annex II. The publication shall contain the following information:

(a) volume of client orders executed on that execution venue expressed as a percentage of total executed volume;
(b) number of client orders executed on that execution venue expressed as a percentage of total executed orders;
(c) confirmation of whether the investment firm has executed an average of less than one trade per business day in the previous year in that class of financial instruments.

3. Investment firms shall publish for each class of financial instruments, a summary of the analysis and conclusions they draw from their detailed monitoring of the quality of execution obtained on the
execution venues where they executed all client orders in the previous year. The information shall include:

(a) an explanation of the relative importance the firm gave to the execution factors of price, costs, speed, likelihood of execution or any other consideration including qualitative factors when assessing the quality of execution;

(b) a description of any close links, conflicts of interests, and common ownerships with respect to any execution venues used to execute orders;

(c) a description of any specific arrangements with any execution venues regarding payments made or received, discounts, rebates or non-monetary benefits received;

(d) an explanation of the factors that led to a change in the list of execution venues listed in the firm’s execution policy, if such a change occurred;

(e) an explanation of how order execution differs according to client categorisation, where the firm treats categories of clients differently and where it may affect the order execution arrangements;

(f) an explanation of whether other criteria were given precedence over immediate price and cost when executing retail client orders and how these other criteria were instrumental in delivering the best possible result in terms of the total consideration to the client;

(g) an explanation of how the investment firm has used any data or tools relating to the quality of execution, including any data published under Commission Delegated Regulation (EU) 2017/575;

(h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider established under Article 65 of Directive 2014/65/EU.

Article 4 Format

Investment firms shall publish the information required in accordance with Article 3(1) and 3(2) on their websites, by filling in the templates set out in Annex II, in a machine-readable electronic format, available for downloading by the public and the information required in accordance with Article 3(3) shall be published on their websites in an electronic format available for downloading by the public.

Article 5 Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8.6.2016

For the Commission

The President Jean-Claude JUNCKER

ANNEXES to the COMMISSION DELEGATED REGULATION supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution

ANNEXES

Annex I: Classes of financial instruments

(a) Equities – Shares & Depositary Receipts

(i) Tick size liquidity bands 5 and 6 (from 2000 trades per day)

(ii) Tick size liquidity bands 3 and 4 (from 80 to 1999 trades per day)

(iii) Tick size liquidity band 1 and 2 (from 0 to 79 trades per day)

(b) Debt instruments

(i) Bonds
(ii) Money markets instruments
(c) Interest rates derivatives
  (i) Futures and options admitted to trading on a trading venue
  (ii) Swaps, forwards, and other interest rates derivatives
(d) credit derivatives
  (i) Futures and options admitted to trading on a trading venue
  (ii) Other credit derivatives
(e) currency derivatives
  (i) Futures and options admitted to trading on a trading venue
  (ii) Swaps, forwards, and other currency derivatives
(f) Structured finance instruments
(g) Equity Derivatives
  (i) Options and Futures admitted to trading on a trading venue
  (ii) Swaps and other equity derivatives
(h) Securitized Derivatives
  (i) Warrants and Certificate Derivatives
  (ii) Other securitized derivatives
(i) Commodities derivatives and emission allowances Derivatives
  (i) Options and Futures admitted to trading on a trading venue
  (ii) Other commodities derivatives and emission allowances derivatives
(j) Contracts for difference
(k) Exchange traded products (Exchange traded funds, exchange traded notes and exchange traded commodities)
(l) Emission allowances
(m) Other instruments

Annex II

Table 1

<table>
<thead>
<tr>
<th>Class of Instrument</th>
<th>Notification if &lt;1 average trade per business day in the previous year</th>
<th>Y/N</th>
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<tbody>
<tr>
<td>Top five execution venues ranked in terms of trading volumes (descending order)</td>
<td>Proportion of volume traded as a percentage total in that class</td>
<td>Proportion of orders executed as percentage of total in that class</td>
</tr>
<tr>
<td>Name and Venue Identifier (MIC or LEI)</td>
<td>Percentage of passive orders</td>
<td>Percentage of aggressive orders</td>
</tr>
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</table>

Table 1: Table showing the notification requirements for different classes of instruments, including the average trade per business day, and various other metrics related to trading volumes and order execution.
### Table 2

<table>
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<tr>
<th>Class of Instrument</th>
<th>Notification if &lt; 1 average trade per business day in the previous year</th>
<th>Y/N</th>
<th>Top five execution venues ranked in terms of trading volumes (descending order)</th>
<th>Proportion of volume traded as a percentage of total in that class</th>
<th>Proportion of orders executed as percentage of total in that class</th>
<th>Percentage of passive orders</th>
<th>Percentage of aggressive orders</th>
<th>Percentage of directed orders</th>
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### Table 3

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<th>Yes/No</th>
<th>Top 5 Venues ranked in terms of volume (descending order)</th>
<th>Proportion of volume executed as a percentage of total in that class</th>
<th>Proportion of orders executed as percentage of total in that class.</th>
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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 “EU” apply to the equivalent business of a third country investment as if they were rules.

(3) In this chapter, provisions marked “EU” 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

Article 38(1) of the MiFID Org Regulation sets out requirements for firms to provide specified information to issuer clients before accepting a mandate to manage an offering.

38(1) Investment firms which provide advice on corporate finance strategy, as set out in Section B(3) of Annex I, 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.

Article 38(2) and (3) of the MiFID Org Regulation sets out requirements to identify all underwriting and placing operations of a firm and to ensure that adequate controls are in place to manage any potential conflicts of interest.

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.

Article 39(1) of the MiFID Org Regulation sets out additional requirements in relation to pricing of offerings in relation to issuance of financial instruments.

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.4A

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

(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

(1) If an opportunity communicated to the range of unconnected analysts under 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

(1) A restriction is unreasonable under 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 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 11A.1.4CR(1).

11A.1.4E

(1) Where a firm acts in accordance with 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

(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

Article 39(2) of the MiFID Org Regulation sets out additional requirements concerning the provision of information.

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.

Article 40 of the MiFID Org Regulation sets out additional requirements in relation to placing.
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 the inducements 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 EU Article 41 of the MiFID Org Regulation sets out additional requirements in relation to advice, distribution and self-placement.

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 Article 24(7), 24(8) and 24(9) of Directive 2014/65/EU 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\(^1\), 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 Directive 2014/49/EU of the European Parliament and of the Council.


Article 42 of the MiFID Org Regulation sets out additional requirements in relation to lending on provision of credit in the context of underwriting or placement.

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.

**11A.1.9 EU**

Article 43 of the *MiFID Org Regulation* sets out record keeping requirements in relation to underwriting or placing.

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.
COBS 11A : Underwriting and placing

Section 11A.2 : Prohibition of future service restrictions

11A.2 Prohibition of future service restrictions

11A.2.1 Unless exempted in □ COBS 11A.2.1R, a firm must not enter into an agreement in writing with a client that contains a future service restriction.

11A.2.2 □ 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 □ For the purposes of □ COBS 11A.2.1R, “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 □ 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 □ (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.
(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’).

(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 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 This chapter applies to a *firm*.

(1) [deleted]

(2) [deleted]

Application: Where?

12.1.3 The *EEA territorial scope rule* modifies the general rule of application to the extent necessary to be compatible with European law (see paragraph 1.1 of Part 2 of **COBS 1 Annex 1**). This means that **COBS 12.2** also applies to passed activities carried on by a *UK MiFID investment firm* from a branch in another EEA state, but does not apply to the *United Kingdom branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*. 
## 12.2 Investment research and non-independent research

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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.

Where this section applies to a firm in relation to business other than its MiFID business, provisions in this section marked "EU" shall apply as if they were rules, other than those that copy out recitals, which shall apply as if they were guidance.

This section applies to both investment research and non-independent research.

Non-independent research is not presented as objective or independent and is accordingly considered a marketing communication.

Both investment research and non-independent research are subcategories of the type of information defined as an investment recommendation in COBS 12.4.

Article 36(1) of the MiFID Org Regulation defines investment research.

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 Directive 2014/65/EU.

Article 36(2) of the MiFID Org Regulation deals with the treatment of non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation (see COBS 12.4) and in contrast to investment research as defined in article 36(1) (see COBS 12.2.17EU).

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 Directive 2014/65/EU 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

Article 37(1) of the MiFID Org Regulation requires firms to apply the conflicts requirements set out in Article 34(3) of the MiFID Org Regulation to persons involved in the production of investment research and non-independent research. Recitals 51, 52 and 55 to the MiFID Org Regulation relate to the required measures and arrangements.

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.

(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 12.2.19EU 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 EU

Article 37(2) of the MiFID Org Regulation requires firms to put arrangements in place around the production of investment research to ensure the conditions set out in that article are satisfied. Recitals 53, 54 and 56 relate to those arrangements and the article 37(2) conditions.

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) …/… [to be inserted before adoption] of XXX supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

Recital 56

Financial analysts should not engage in activities other than the preparation of investment research where engaging in such activities is 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

(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).

12.2.22 EU Article 37(3) of the MiFID Org Regulation provides for exemptions from article 37(1) of the MiFID Org Regulation (COBS 12.2.19EU).

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 [deleted]

12.4.1A [article 20 of the Market Abuse Regulation]

[Note: This section applies to a person that prepares or disseminates investment recommendations.]

12.4.2 [deleted]

12.4.3 [deleted]

Fair presentation and disclosure

12.4.4 [deleted]

12.4.4A [article 20(1) of the Market Abuse Regulation]

12.4.5 [deleted]

12.4.6 [deleted]

Additional obligations in relation to fair presentation of recommendations

12.4.7 [deleted]

12.4.8 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 [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 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 (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).

[Note: article 5 of the PRIIPs Regulation]

(2) Since the PRIIPs Regulation imposes directly applicable 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 (1) A UCITS management company is exempt from the PRIIPs Regulation until 31 December 2021. 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, other than a UCITS, is able to benefit from this exemption where a Member State applies rules on the format and content of the key investor information document in 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 may, until 31 December 2021, 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**

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]

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**

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 unit in a regulated collective investment scheme; or
   - [deleted]
   - [deleted]
   - 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
   - an interest in an investment trust savings scheme; or

3. a key features illustration:
   - for a unit in a regulated collective investment scheme; or
   - [deleted]
   - if it includes in a key features document;
     - the information from the key features illustration; and
     - the summary key information required by COBS 13.4.1AR; or
Section 13.1 : The obligation to prepare product information

(d) [deleted]

(e) for an interest in an investment trust savings scheme.

(4) [deleted]
13.2 Product information: production standards, form and contents

13.2.1 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 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 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 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 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 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 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 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:

<table>
<thead>
<tr>
<th>Heading</th>
<th>Information to be given</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Its aims’</td>
<td>A brief description of the product’s aims</td>
</tr>
<tr>
<td>‘Your commitment’ or ‘Your investment’</td>
<td>What a retail client is committing to or investing in and any consequences of failing to maintain the commitment or investment</td>
</tr>
<tr>
<td>‘Risks’</td>
<td>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</td>
</tr>
<tr>
<td>‘Questions and Answers’</td>
<td>(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.</td>
</tr>
</tbody>
</table>

**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 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 (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.
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.

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.

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 scheme stakeholder pension scheme or drawdown pension reducing the value of their rights to zero.
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.

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.14EU) 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

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.

(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.

Charges information should be presented as prominently as any other information in the summary key information.

Presentation of summary key information

(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 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 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 (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 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 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.14EU) 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

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.14EU) 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.

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.14EU), 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 EEA 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

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.

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.

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 uncry stallised 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*.

1.3 **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.

R
Providing a stochastic projection

1.5 A stochastic projection may only be provided if:

(1) [deleted]

(2) [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 13.4.2 R, the specimen benefits table, contained within the "Stakeholder pension decision tree" factsheet available on www.moneyadviceservice.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.
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.

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:

<table>
<thead>
<tr>
<th>Product</th>
<th>Projection date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A contract which is a whole life assurance the premiums under which</td>
<td>The anniversary of the commencement date:</td>
</tr>
<tr>
<td>are regular premiums</td>
<td>(a) which first falls after the seventy-fifth birthday of the life assured; or</td>
</tr>
<tr>
<td></td>
<td>(b) (if there is more than one life assured) the anniversary of the commencement date which</td>
</tr>
<tr>
<td></td>
<td>falls after the seventy fifth birthday of:</td>
</tr>
<tr>
<td></td>
<td>(i) (if benefits are payable on the first death) the oldest life assured; or</td>
</tr>
<tr>
<td></td>
<td>(ii) (in all other cases) the youngest life assured;</td>
</tr>
<tr>
<td></td>
<td>subject to a minimum <em>projection date</em> of ten years.</td>
</tr>
<tr>
<td>(2) A contract that is not in (1):</td>
<td>An appropriate date which highlights the features of the product</td>
</tr>
<tr>
<td>(a) where the relevant marketing refers to a surrender value or an option</td>
<td></td>
</tr>
<tr>
<td>to take benefits before they would otherwise be paid; or</td>
<td></td>
</tr>
<tr>
<td>(b) that is open-ended, or linked to one or more lives, which is not a</td>
<td></td>
</tr>
<tr>
<td>personal pension scheme or stakeholder pension scheme</td>
<td></td>
</tr>
<tr>
<td>(3) A contract that is not in (1) or (2) and has a specified maturity</td>
<td>The maturity date specified in the contract</td>
</tr>
<tr>
<td>date</td>
<td></td>
</tr>
<tr>
<td>(4) A contract that is not in (1) or (2) or (3)</td>
<td>The tenth anniversary of the commencement date</td>
</tr>
</tbody>
</table>

**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.                    |

**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;

(ii) 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:

<table>
<thead>
<tr>
<th>Nominal rates</th>
<th>Lower rate</th>
<th>Intermediate rate</th>
<th>Higher rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>tax-exempt business held in a wrapper or by a friendly society</td>
<td>2%</td>
<td>5%</td>
<td>8%</td>
</tr>
<tr>
<td>personal pension schemes, stakeholder pension schemes and investment-linked annuities</td>
<td>1½%</td>
<td>4½%</td>
<td>7½%</td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Price inflation</th>
<th>Lower rate</th>
<th>Intermediate rate</th>
<th>Higher rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00%</td>
<td>2.00%</td>
<td>4.00%</td>
<td></td>
</tr>
<tr>
<td>≥1.5%</td>
<td>≥3.5%</td>
<td>≥5.5%</td>
<td></td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>RPI price inflation</th>
<th>Lower rate</th>
<th>Intermediate rate</th>
<th>Higher rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00%</td>
<td>3.00%</td>
<td>5.00%</td>
<td></td>
</tr>
</tbody>
</table>

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 uncrystattised funds pension lump sum payments
2.9 (1) A standardised deterministic projection for a drawdown pension or regular uncrystattised 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 uncrystattised 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 uncrysalised 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.

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:

<table>
<thead>
<tr>
<th>Rate</th>
<th>Lower rate</th>
<th>Intermediate rate</th>
<th>Higher rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level or fixed</td>
<td>Y+1.5%</td>
<td>Y+3.5%</td>
<td>Y+5.5%</td>
</tr>
</tbody>
</table>
of increase annuities

| RPI or LPI linked annuities | Y-1% | Y  | Y+1% |

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.

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).

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.

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.

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.
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*]

R 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)

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.

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) 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:

<table>
<thead>
<tr>
<th>At end of year</th>
<th>Total paid in to date</th>
<th>With-drawals to date</th>
<th>Total actual deductions to date</th>
<th>Effect of deductions to date</th>
<th>What you might get back</th>
</tr>
</thead>
<tbody>
<tr>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
</tbody>
</table>

1...

5

10...

(2) for any other non-PRIIP packaged product must be in the following form:

<table>
<thead>
<tr>
<th>At end of year</th>
<th>Investment to date</th>
<th>Income</th>
<th>Effect of deductions to date</th>
<th>What you might get back</th>
</tr>
</thead>
<tbody>
<tr>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
</tbody>
</table>

1

5

10...

(3) must be completed in accordance with the following notes:

(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.
### COBS 13 : Preparing product information

(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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**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 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)

**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.

**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:

<table>
<thead>
<tr>
<th>Note 1</th>
<th>Note 2</th>
<th>Note 3</th>
<th>Note 4</th>
<th>Note 5</th>
<th>Note 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>At end of year</td>
<td>The payments into your plan</td>
<td>Withdrawals</td>
<td>Before charges are taken</td>
<td>If only plan and investment charges are taken</td>
<td>After all charges are taken from this plan</td>
</tr>
<tr>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>...</td>
<td>5</td>
<td>At age [xx]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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
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

(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) with the key information document for that PRIIP.

[Note: article 13 of the PRIIPs Regulation]

(2) Since the PRIIPs Regulation imposes directly applicable 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

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 EEA, 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 EEA, 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]

Provision of key investor information document or NURS-KII document

(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

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

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.

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.

The documents or information required to be provided or offered by COBS 14.2.1R and COBS 14.2.1CR 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.

(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 14.2.1R.

Firm not to cause confusion about the identity of the producer of a product

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** 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. a key features document or key features illustration, if another person is required to provide the distance marketing information by the rules of another EEA State;

3. the Solvency II Directive information, if another person is required to provide that information by the rules of another EEA State.

4. [deleted]

[Note: in respect of (3), article 185(8) of the Solvency II Directive]

### Exception: key features illustrations

**14.2.6** 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** 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** A firm is not required to provide a key features document or a key features illustration for:

1. [deleted]

2. a life policy if:
   - the firm is operating from an establishment in another EEA State and the sale is by distance contract; or
   - 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** 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  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 EEA and not present in the EEA 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  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  (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  [deleted]

Exception: successive operations

14.2.12  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 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 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 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 (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 (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

(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 directly applicable EU regulations apply to the communication of that additional information. For example, for marketing communications relating to a UCITS scheme or EEA 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 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 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.

14.3.1A 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 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 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 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 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 [deleted]

14.3.7 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 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.

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.

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

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

(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 the requirements of articles 78 and 79 of the UCITS Directive (see ■ COLL 4.7 (Key investor information and marketing communications)) and the KII Regulation, 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 This section applies to a firm in relation to its MiFID, equivalent third country or optional exemption business.

Effect of provisions marked “EU” for third country investment firms and MiFID optional exemption firms

14.3A.2 Provisions in this section marked “EU” apply in relation to MiFID optional exemption business as if they were rules (see COBS 1.2.2G).

14.3A.2A The effect of GEN 2.2.22AR is that provisions in this section marked “EU” 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 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 COBS 14.3A.3R supplements COBS 2.2A.2R (Information disclosure before providing services (MiFID provisions)).
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 Directive 2003/71/EC, 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

(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

46(2) Investment firms shall, 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.

[Note: article 46(2) of the MiFID Org Regulation]

14.3A.8

The provisions in COBS that reproduce the information requirements contained in articles 47 to 50 of the MiFID Org Regulation are:

- COBS 6.1ZA.5EU
- COBS 6.1ZA.8EU
- COBS 6.1ZA.9EU
- COBS 6.1ZA.14EU and
- COBS 14.3A.5EU.

Medium of disclosure

14.3A.9

46(3) The information referred to in paragraphs 1 and 2 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

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 accordance with the UCITS Directive and the PRIIPs Regulation

14.3A.11

51 Investment 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

Information requests by authorised fund managers for liquidity management purposes

14.4.10 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 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 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.

<table>
<thead>
<tr>
<th>Age saving in a lifetime ISA started</th>
<th>Total amount paid in by lifetime ISA saver/investor</th>
<th>Total amount paid in, plus lifetime ISA government bonus</th>
<th>Estimated outcome at age 60 from 0% return</th>
<th>Estimated outcome at age 60 from x% return</th>
<th>Charges and estimated inflation would reduce a x% return to</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
<td>%</td>
</tr>
<tr>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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 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.14EU); 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 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
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.
## 15.2 The right to cancel

### Cancellable contracts

A consumer has a right to cancel any of the following contracts with a firm:

<table>
<thead>
<tr>
<th>Cancellable contract</th>
<th>Cancellation period</th>
<th>Supplementary provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Life and pensions:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• a life policy (including a pension annuity, a pension policy or within a wrapper)</td>
<td>30 calendar days</td>
<td>For a life policy effected when opening or transferring a wrapper, the 30 calendar day right to cancel applies to the entire arrangement</td>
</tr>
<tr>
<td>• a contract to join a personal pension scheme or a stakeholder pension scheme</td>
<td></td>
<td>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</td>
</tr>
<tr>
<td>• a pension contract</td>
<td></td>
<td>Exemptions may apply (see COBS 15 Annex 1)</td>
</tr>
<tr>
<td>• a contract for a pension transfer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 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</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Lifetime ISAs (advised but not at a distance):**

<table>
<thead>
<tr>
<th>Cancellable contract</th>
<th>Cancellation period</th>
<th>Supplementary provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• a non-distance contract to open or transfer a lifetime ISA</td>
<td>30 calendar days</td>
<td>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)</td>
</tr>
</tbody>
</table>

**Cash deposit ISAs:**

<table>
<thead>
<tr>
<th>Cancellable contract</th>
<th>Cancellation period</th>
<th>Supplementary provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• a contract for a cash deposit ISA</td>
<td>14 calendar days</td>
<td>Exemptions may apply (see COBS 15 Annex 1)</td>
</tr>
</tbody>
</table>

**Non-life/pensions (advised but not at a distance):**

<table>
<thead>
<tr>
<th>Cancellable contract</th>
<th>Cancellation period</th>
<th>Supplementary provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• to buy a unit in a regulated collective investment scheme (in-</td>
<td>14 calendar days</td>
<td>These rights arise only following a personal recommendation of the</td>
</tr>
</tbody>
</table>
**COBS 15 : Cancellation**

**Section 15.2 : The right to cancel**

<table>
<thead>
<tr>
<th>Cancellable contract</th>
<th>Cancellation period</th>
<th>Supplementary provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>including within a <a href="#">wrapper or pension wrapper</a></td>
<td></td>
<td>contract (by the <em>firm</em> or any other person).</td>
</tr>
<tr>
<td>• to open or transfer a child trust fund (CTF)</td>
<td></td>
<td>For a <em>unit</em> bought when opening or transferring a <em>wrapper</em> or <em>pension wrapper</em>, the 14 calendar day right to cancel applies to the entire arrangement.</td>
</tr>
<tr>
<td>• to open or transfer an ISA (other than a lifetime ISA)</td>
<td></td>
<td>Exemptions may apply (see COBS 15 Annex 1).</td>
</tr>
<tr>
<td>• for an <a href="#">Enterprise Investment Scheme</a></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**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: article 186 of the Solvency II Directive and article 6(1) of the Distance Marketing Directive]**

### 15.2.2

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

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: article 186 of the Solvency II Directive and article 6(1) of the Distance Marketing Directive]**

### 15.2.4

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  

(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 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 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 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 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 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 (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 (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**  
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**  
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**  
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 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 This chapter applies as modified to the extent necessary for it to be compatible with any enactment.

15.5.3 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** 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** 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** 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:
      - *pension buy-out contract*; or
      - purchase of a without-profits deferred *pension annuity*; or
      - *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
      - 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*:
      - in an **EEA State** other than the **UK** (but that state’s rules may apply); or
      - outside the **EEA** 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 [deleted]

16.1.2 ■ COBS 16.2 to ■ COBS 16.4 apply in relation to designated investment business other than MiFID, equivalent third country or optional exemption business.
Section 16.2: Occasional reporting

Execution of orders other than when managing investments

16.2.1 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 or EEA 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 or EEA 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 EEA UCITS scheme;
(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 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.

16.3.2 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 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]
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

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

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 (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 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 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 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 income withdrawals

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:

(a) in an EEA State other than the United Kingdom; or

(b) outside the EEA 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
Section 16.6 : Communications to clients - life insurance, long term care insurance and income withdrawals

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.

Annual statements

16.6.8 R At intervals no longer than 12 months from the date a retail client takes a pension commencement lump sum, or makes income withdrawals or one-off, ad-hoc or regular uncrytalised funds pension lump sum payments, 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; 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.

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:

(1) the information required by §COBS 13 Annex 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.
## Trade confirmation and periodic information

This annex forms part of COBS 16.2.1 R

### General

<table>
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<th>(1) Trade confirmation information</th>
<th>(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)</th>
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<td>General</td>
<td></td>
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<tr>
<td>1.</td>
<td>the reporting firm identification;</td>
<td>Y</td>
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<tr>
<td>2.</td>
<td>the name or other designation of the client;</td>
<td>Y</td>
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<td>3.</td>
<td>the trading day;</td>
<td>Y</td>
</tr>
<tr>
<td>4.</td>
<td>the trading time;</td>
<td>Y</td>
</tr>
<tr>
<td>5.</td>
<td>the type of the order (for example, a limit order or a market order);</td>
<td>Y</td>
</tr>
<tr>
<td>6.</td>
<td>the venue identification;</td>
<td>Y</td>
</tr>
<tr>
<td>7.</td>
<td>the instrument identification;</td>
<td>Y</td>
</tr>
<tr>
<td>7A.</td>
<td>the underlying instrument identification (Note 1);</td>
<td>Y</td>
</tr>
<tr>
<td>7B.</td>
<td>the instrument type (Note 2);</td>
<td>Y</td>
</tr>
<tr>
<td>7C.</td>
<td>the maturity date (Note 3);</td>
<td>Y</td>
</tr>
<tr>
<td>7D.</td>
<td>the derivative type (Note 4);</td>
<td>Y</td>
</tr>
<tr>
<td>7E.</td>
<td>put/call (Note 5);</td>
<td>Y</td>
</tr>
<tr>
<td>7F.</td>
<td>the strike price (Note 6);</td>
<td>Y</td>
</tr>
<tr>
<td>7G.</td>
<td>the price multiplier (Note 7);</td>
<td>Y</td>
</tr>
<tr>
<td>8.</td>
<td>the buy/sell indicator;</td>
<td>Y</td>
</tr>
<tr>
<td>9.</td>
<td>the nature of the order if other than buy/sell;</td>
<td>Y</td>
</tr>
</tbody>
</table>
**COBS 16 : Reporting information to clients (non-MiFID provisions)**

**Annex 1R**

<table>
<thead>
<tr>
<th>General</th>
<th>(1) Trade confirmation information</th>
<th>(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)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9A.</td>
<td>the counterparty;</td>
<td>Y</td>
</tr>
<tr>
<td>10.</td>
<td>the quantity;</td>
<td>Y</td>
</tr>
<tr>
<td>10A.</td>
<td>the quantity notation (Note 8);</td>
<td>Y</td>
</tr>
<tr>
<td>11.</td>
<td>the unit price;</td>
<td>Y</td>
</tr>
<tr>
<td>12.</td>
<td>the total consideration;</td>
<td>Y</td>
</tr>
<tr>
<td>13.</td>
<td>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;</td>
<td>Y</td>
</tr>
<tr>
<td>14.</td>
<td>the rate of exchange obtained where the transaction involves a conversion of currency;</td>
<td>Y</td>
</tr>
<tr>
<td>15.</td>
<td>[intentionally blank]</td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>[intentionally blank]</td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>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;</td>
<td>Y</td>
</tr>
<tr>
<td>18.</td>
<td>if the client's counterparty was the firm itself</td>
<td>Y</td>
</tr>
</tbody>
</table>
### COBS 16 : Reporting information to clients (non-MiFID provisions)

<table>
<thead>
<tr>
<th>(1) Trade confirmation information</th>
<th>(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)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>19. the transaction reference number (Note 9); and</td>
<td>Y \ Y</td>
</tr>
<tr>
<td>20. the customer / client identification (Note 10).</td>
<td></td>
</tr>
</tbody>
</table>

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

| 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.

<table>
<thead>
<tr>
<th>Periodic information (all cases)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. the name of the <strong>firm</strong>;</td>
</tr>
<tr>
<td>2. the name or other designation of the retail client's account;</td>
</tr>
<tr>
<td>3. a statement of the contents and the valuation of the portfolio, including details of:</td>
</tr>
<tr>
<td>(a) each designated investment held, its market value or fair value if market value is unavailable;</td>
</tr>
<tr>
<td>(b) the cash balance at the beginning and at the end of the reporting period; and</td>
</tr>
<tr>
<td>(c) the performance of the portfolio during the reporting period;</td>
</tr>
<tr>
<td>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;</td>
</tr>
<tr>
<td>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;</td>
</tr>
<tr>
<td>6. the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio; and</td>
</tr>
<tr>
<td>7. information about other corporate actions giving rights in relation to designated investments held in the portfolio.</td>
</tr>
</tbody>
</table>
16A.1 Application

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 “EU” for third country investment firms and MiFID optional exemption firms

16A.2 Provisions in this chapter marked “EU” 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.2A The effect of GEN 2.2.22AR is that provisions in this chapter marked “EU” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

Effect of provisions marked “EU” for firms distributing insurance-based investment products

16A.3 Provisions in this chapter marked “EU” 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 (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 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

59(1) Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order:

(a) promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;

(b) send a notice to the 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 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 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 client;

(c) the trading day;

(d) the trading time;

(e) the type of the order;

(f) the venue identification;

(g) the instrument identification;
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 EU 61 The requirements applicable to reports for retail and professional clients under Articles 49 and 59 shall apply unless investment firms enter into agreements with eligible counterparties to determine content and timing of reporting.

[Note: article 61 of the MiFID Org Regulation]
Provision by a firm and contents: MiFID business

60(1) Investments firms which provide the service of portfolio management to 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:

(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 once every three months, except in the following cases:

(a) where the investment firm provides its 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 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 4(1)(44)(c) of, or any of points 4 to 11 of Section C in Annex I to Directive 2014/65/EU.

60(4) Investment firms, in cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, shall provide promptly to the 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 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 client by another person.

[Note: article 60 of the MiFID Org Regulation]

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.4.1EU) 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

18(1) Without prejudice to Article 185 of Directive 2009/138/EC of the European Parliament and of the Council, 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

62(1) Investment firms providing the service of portfolio management shall 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

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

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.
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 authorised under Directive 2000/12/EC of the European Parliament and of the Council in respect of deposits within the meaning of that Directive 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 Directive 2014/65/EU and its implementing measures 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 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 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 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 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 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 (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 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 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.
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

The provisions of COBS in the table do not apply to a trustee firm to which this section applies:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1A</td>
<td>Adviser charging and remuneration</td>
</tr>
<tr>
<td>6.1B</td>
<td>Retail investment product provider requirements relating to adviser charging and remuneration</td>
</tr>
<tr>
<td>6.4</td>
<td>Disclosure of charges, remuneration and commission</td>
</tr>
<tr>
<td>9.6</td>
<td>Special rules for providing basic advice on a stakeholder product</td>
</tr>
<tr>
<td>16A.4.5</td>
<td>Guidance on contingent liability transactions</td>
</tr>
</tbody>
</table>

18.1.2 R 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:
Duties of trustee firms under the general law

18.1.4 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 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 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

## 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:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1A</td>
<td>Adviser charging and remuneration</td>
</tr>
<tr>
<td>6.1B</td>
<td>Retail investment product provider requirements relating to adviser charging and remuneration</td>
</tr>
<tr>
<td>COBS 6.2B</td>
<td>Describing advice services</td>
</tr>
<tr>
<td>6.4</td>
<td>Disclosure of charges, remuneration and commission</td>
</tr>
<tr>
<td>9.4</td>
<td>Suitability reports</td>
</tr>
<tr>
<td>9.6</td>
<td>Special rules for providing basic advice on a stakeholder product</td>
</tr>
<tr>
<td>16.3.9</td>
<td>Guidance on contingent liability transaction</td>
</tr>
<tr>
<td>16.5</td>
<td>Quotations for surrender values</td>
</tr>
<tr>
<td>16.6</td>
<td>Life insurance contracts - communications to clients</td>
</tr>
<tr>
<td>16 Annex 1 R (1) 14</td>
<td>Information to be provided in accordance with COBS 16.2.1 R and 16.3</td>
</tr>
</tbody>
</table>

## 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:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Distance communications</td>
</tr>
<tr>
<td>7</td>
<td>Insurance distribution</td>
</tr>
<tr>
<td>13</td>
<td>Preparing product information</td>
</tr>
<tr>
<td>14.2</td>
<td>Providing product information to clients</td>
</tr>
</tbody>
</table>
### Energy market activity and oil market activity - non-MiFID business

**18.2.3** 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.

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Acting honestly, fairly and professionally</td>
</tr>
<tr>
<td>2.4</td>
<td>Agent as client and reliance on others</td>
</tr>
<tr>
<td>3</td>
<td>Client categorisation</td>
</tr>
<tr>
<td>4</td>
<td>Communication to clients including financial promotions, but only in relation to communicating or approving a financial promotion</td>
</tr>
<tr>
<td>5.2</td>
<td>E-commerce</td>
</tr>
<tr>
<td>12</td>
<td>Investment research and non-independent research</td>
</tr>
<tr>
<td>16.2</td>
<td>Occasional reporting</td>
</tr>
</tbody>
</table>

### Energy market activity and oil market activity - dealings with or through authorised persons

**18.2.4** 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.).

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application</td>
</tr>
<tr>
<td>2.4</td>
<td>Agent as client and reliance on others</td>
</tr>
<tr>
<td>4.12</td>
<td>Unregulated collective investment schemes</td>
</tr>
<tr>
<td>5.2</td>
<td>E-commerce</td>
</tr>
</tbody>
</table>
Other non-MiFID business related to commodity or exotic derivative instruments

**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**

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**

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**

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.

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**

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:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1A</td>
<td>Adviser charging and remuneration</td>
</tr>
<tr>
<td>6.1B</td>
<td>Retail investment product provider requirements relating to adviser charging and remuneration</td>
</tr>
<tr>
<td>6.2B</td>
<td>Describing advice services</td>
</tr>
<tr>
<td>6.4</td>
<td>Disclosure of charges, remuneration and commission</td>
</tr>
<tr>
<td>9.4</td>
<td>Suitability reports</td>
</tr>
<tr>
<td>9.6</td>
<td>Special rules for providing basic advice on a stakeholder product</td>
</tr>
<tr>
<td>16.3.7</td>
<td>Guidance on contingent liability transaction</td>
</tr>
<tr>
<td>16.5</td>
<td>Quotations for surrender values</td>
</tr>
<tr>
<td>16.6</td>
<td>Life insurance contracts - communications to clients</td>
</tr>
<tr>
<td>16 Annex 1 R (1) 14</td>
<td>Information to be provided in accordance with COBS 16.2.1 R and 16.3</td>
</tr>
</tbody>
</table>

**Corporate finance business - unlikely to be relevant**

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:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Distance communications, except in relation to distance contracts concluded with consumers</td>
</tr>
<tr>
<td>7</td>
<td>Insurance distribution</td>
</tr>
</tbody>
</table>
### Corporate finance business - non-MiFID business

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.

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Acting honestly, fairly and professionally</td>
</tr>
<tr>
<td>2.3A</td>
<td>Inducements</td>
</tr>
<tr>
<td>2.4</td>
<td>Agent as client and reliance on others</td>
</tr>
<tr>
<td>3</td>
<td>Client categorisation</td>
</tr>
<tr>
<td>4</td>
<td>Communication to clients including financial promotions, except COBS 4.5 - COBS 4.11</td>
</tr>
<tr>
<td>5.1</td>
<td>The information and other requirements of the Distance Marketing Directive, but only in relation to distance contracts concluded with consumers</td>
</tr>
<tr>
<td>5.2</td>
<td>E-commerce</td>
</tr>
<tr>
<td>11.7A</td>
<td>Personal account dealing</td>
</tr>
<tr>
<td>11A.2</td>
<td>Prohibition of future service restrictions</td>
</tr>
<tr>
<td>12</td>
<td>Investment research and non-independent research</td>
</tr>
<tr>
<td>15</td>
<td>Cancellation, but only in relation to distance contracts concluded with consumers</td>
</tr>
</tbody>
</table>

### Corporate finance business – optionally exempt business

Only the provisions of COBS in the table apply to corporate finance business which is MiFID optional exemption business.
<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Acting honestly, fairly and professionally</td>
</tr>
<tr>
<td>2.2A</td>
<td>Information disclosures before providing services</td>
</tr>
<tr>
<td>2.3A</td>
<td>Inducements</td>
</tr>
<tr>
<td>2.4</td>
<td>Agent as client and reliance on others</td>
</tr>
<tr>
<td>3</td>
<td>Client categorisation</td>
</tr>
<tr>
<td>4</td>
<td>Communication to clients including financial promotions, except COBS 4.5-COBS 4.6 and COBS 4.8-COBS 4.11</td>
</tr>
<tr>
<td>5.1</td>
<td>The information and other requirements of the Distance Marketing Directive, but only in relation to distance contracts concluded with consumers</td>
</tr>
<tr>
<td>5.2</td>
<td>E-commerce</td>
</tr>
<tr>
<td>6.1A</td>
<td>Information about the firm, its services and remuneration</td>
</tr>
<tr>
<td>6.2B</td>
<td>Describing advice services</td>
</tr>
<tr>
<td>8A</td>
<td>Client agreements</td>
</tr>
<tr>
<td>9A</td>
<td>Suitability</td>
</tr>
<tr>
<td>11.7A</td>
<td>Personal account dealing</td>
</tr>
<tr>
<td>12</td>
<td>Investment research</td>
</tr>
<tr>
<td>14.3.1A</td>
<td>Information about financial instruments</td>
</tr>
<tr>
<td>15</td>
<td>Cancellation, but only in relation to distance contracts concluded with consumers</td>
</tr>
<tr>
<td>16A</td>
<td>Reporting information to clients</td>
</tr>
</tbody>
</table>

**18.3.4** ■ 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

The provisions of COBS in the table do not apply in relation to any *stock lending activity carried on by a firm*:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1A</td>
<td>Adviser charging and remuneration</td>
</tr>
<tr>
<td>6.1B</td>
<td>Retail investment product provider requirements relating to adviser charging and remuneration</td>
</tr>
<tr>
<td>COBS 6.2B</td>
<td>Describing advice services</td>
</tr>
<tr>
<td>6.4</td>
<td>Disclosure of charges, remuneration and commission</td>
</tr>
<tr>
<td>9.4</td>
<td>Suitability reports</td>
</tr>
<tr>
<td>9.6</td>
<td>Special rules for providing basic advice on a stakeholder product</td>
</tr>
<tr>
<td>COBS 16A.4.5</td>
<td>Guidance on contingent liability transaction</td>
</tr>
<tr>
<td>16.5</td>
<td>Quotations for surrender values</td>
</tr>
<tr>
<td>16.6</td>
<td>Life insurance contracts - communications to clients</td>
</tr>
<tr>
<td>16 Annex 1 R (1) 14</td>
<td>Information to be provided in accordance with COBS 16.2.1 R and 16.3</td>
</tr>
</tbody>
</table>

## 18.4.2

The provisions of COBS in the table are unlikely to be relevant in relation to any *stock lending activity carried on by a firm*:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Distance communications, except in relation to <em>distance contracts</em> concluded with consumers</td>
</tr>
<tr>
<td>7</td>
<td>Insurance distribution</td>
</tr>
<tr>
<td>13</td>
<td>Preparing product information</td>
</tr>
<tr>
<td>14.2</td>
<td>Providing product information</td>
</tr>
<tr>
<td>15</td>
<td>Cancellation, except cancellation and withdrawal rights in relation to <em>distance contracts</em> concluded with consumers</td>
</tr>
<tr>
<td>17</td>
<td>Claims handling for long-term care insurance</td>
</tr>
<tr>
<td>18.1</td>
<td>Trustee firms’ regime</td>
</tr>
<tr>
<td>18.2</td>
<td>Energy market activity and oil market activity</td>
</tr>
<tr>
<td>------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>19</td>
<td>Pensions - supplementary provisions</td>
</tr>
<tr>
<td>20</td>
<td>With-profits</td>
</tr>
</tbody>
</table>
18.5 Residual CIS operators and small authorised UK AIFMs

Application

18.5.1 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 [deleted]

18.5.1B [deleted]

Application or modification of general COBS rules

18.5.2 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

<table>
<thead>
<tr>
<th>Chapter, section, rule</th>
<th>Small authorised UK AIFM and a residual CIS operator</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (Application)</td>
<td>Applies</td>
</tr>
<tr>
<td>2.1.1R (The client’s best interests rule)</td>
<td>Applies</td>
</tr>
<tr>
<td>2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)</td>
<td>Applies</td>
</tr>
<tr>
<td>2.3B (Inducements and research)</td>
<td>Applies, as modified by COBS 18 Annex 1</td>
</tr>
</tbody>
</table>
### 18.5 (Residual CIS operators and small authorised UK AIFMs)

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.4</td>
<td>(Agent as client and reliance on others)</td>
<td>Applies</td>
</tr>
<tr>
<td>4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)</td>
<td>Applies</td>
<td></td>
</tr>
<tr>
<td>5.2</td>
<td>(E-commerce)</td>
<td>Applies</td>
</tr>
<tr>
<td>11.2</td>
<td>(Best execution for AIFMs and residual CIS operators)</td>
<td>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.</td>
</tr>
<tr>
<td>11.3</td>
<td>(Client order handling)</td>
<td>Applies</td>
</tr>
<tr>
<td>16.3</td>
<td>(Periodic reporting)</td>
<td>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.</td>
</tr>
<tr>
<td>18.5</td>
<td>(Residual CIS operators and small authorised UK AIFMs)</td>
<td>Applies</td>
</tr>
<tr>
<td>18 Annex 1</td>
<td>(Research and inducements for collective portfolio managers)</td>
<td>Applies (subject to COBS 18.5.3CR)</td>
</tr>
<tr>
<td>18 Annex 2</td>
<td>(Record keeping: client orders and transactions)</td>
<td>Applies</td>
</tr>
</tbody>
</table>

#### 18.5.2-A

[deleted]

#### 18.5.2-B

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

[deleted]

### General modifications

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 COBS 11.3 (Client order handling) are to be read as references to the management by a firm of financial instruments held for or within the fund.

(4) [deleted]

18.5.3A

18.5.4

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.

[deleted]

18.5.4A

18.5.4B

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

Research and inducements

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.

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

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.

These modifications apply to COBS 11.3 (Client order handling), which is applied in the table at COBS 18.5.2R.
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.

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 or another EEA State, 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.

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

(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

<table>
<thead>
<tr>
<th>The fund documents should include provision about:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Regulator</td>
</tr>
<tr>
<td>The firm statutory status in accordance with GEN 4 Annex 1 R (Statutory status disclosure);</td>
</tr>
<tr>
<td>(2) Services</td>
</tr>
<tr>
<td>the nature of the services that the firm will provide;</td>
</tr>
<tr>
<td>(3) Payments for services</td>
</tr>
<tr>
<td>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:</td>
</tr>
<tr>
<td>(a) the basis of calculation;</td>
</tr>
<tr>
<td>(b) how it is to be paid and collected;</td>
</tr>
<tr>
<td>(c) how frequently it is to be paid; and</td>
</tr>
<tr>
<td>(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 by the firm with or for the fund, in addition to or in lieu of any fees;</td>
</tr>
<tr>
<td>(4) Commencement</td>
</tr>
<tr>
<td>when and how the firm is appointed;</td>
</tr>
<tr>
<td>(5) Accounting</td>
</tr>
<tr>
<td>the arrangements for accounting to the fund or investors in the fund for any transaction effected;</td>
</tr>
</tbody>
</table>
The fund documents should include provision about:

<table>
<thead>
<tr>
<th></th>
<th>Termination method</th>
</tr>
</thead>
<tbody>
<tr>
<td>(6)</td>
<td>how the appointment of the firm may be terminated;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Complaints procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>(7)</td>
<td>how to complain to the firm and a statement that the investors in the fund may subsequently complain direct to the Financial Ombudsman Service;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(8)</td>
<td>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;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Investment objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>(9)</td>
<td>the investment objectives for the portfolio of the fund;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>(10)</td>
<td>any restrictions on:</td>
</tr>
<tr>
<td></td>
<td>(a) the types of investments or property which may be included in the portfolio of the fund;</td>
</tr>
<tr>
<td></td>
<td>(i) the markets on which investments or property may be acquired for the portfolio of the fund;</td>
</tr>
<tr>
<td></td>
<td>(ii) 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</td>
</tr>
<tr>
<td></td>
<td>(b) that there are no such restrictions;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Holding fund assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>(11)</td>
<td>if it is the case, that the firm will:</td>
</tr>
<tr>
<td></td>
<td>(a) hold money on behalf of the fund or be the custodian of investments or other property of the fund; or</td>
</tr>
<tr>
<td></td>
<td>(i) 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</td>
</tr>
<tr>
<td></td>
<td>(ii) in either case:</td>
</tr>
<tr>
<td></td>
<td>(i) how any money is to be deposited;</td>
</tr>
</tbody>
</table>
|   | (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 respons
The fund documents should include provision about:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>ible for the acts and omissions of that person;</td>
</tr>
<tr>
<td>(ii)</td>
<td>the extent to which the firm accepts liability for any loss of the investment of the fund;</td>
</tr>
<tr>
<td>(iii)</td>
<td>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;</td>
</tr>
<tr>
<td>(iv)</td>
<td>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;</td>
</tr>
<tr>
<td>(v)</td>
<td>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;</td>
</tr>
<tr>
<td>(vi)</td>
<td>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;</td>
</tr>
<tr>
<td>(vii)</td>
<td>the arrangements for determining the exercise of any voting rights conferred by investments of the fund; and</td>
</tr>
<tr>
<td>(viii)</td>
<td>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;</td>
</tr>
<tr>
<td>(ix)</td>
<td>Clients' money outside the United Kingdom</td>
</tr>
<tr>
<td></td>
<td>if it is the case, that the firm may hold the money of the fund in a client bank account outside the United Kingdom;</td>
</tr>
<tr>
<td>(12)</td>
<td>Exchange rates</td>
</tr>
<tr>
<td></td>
<td>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 invest-</td>
</tr>
</tbody>
</table>
The fund documents should include provision about:

- **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;

- **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;

- **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;

- **Acting as principal**
  if it is the case, that the firm may act as principal in a transaction with the fund;

- **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;

- **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;

- **Periodic statements**
  (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;
The fund documents should include provision about:

(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.

Periodic statements for an unauthorised fund

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

(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  

(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) For a *firm* acting as an *outgoing ECA provider*, the exemption for *retail client* investors ordinarily resident outside the *United Kingdom*
applies only to an investor in the fund who is a retail client ordinarily resident outside the EEA.

Record keeping requirements

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.

Table: Periodic statements

<table>
<thead>
<tr>
<th>Suitable intervals</th>
<th>A periodic statement should be provided at least:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adequate information</th>
<th>(2) (a)</th>
<th>A periodic statement should contain:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>(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</td>
<td></td>
</tr>
<tr>
<td>(ii)</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>For a firm acting as an outgoing ECA provider, the words 'United Kingdom' is replaced by 'EEA'.</td>
<td></td>
</tr>
</tbody>
</table>

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**

**Table: General contents of a periodic statement**

This table belongs to COBS 18.5.15 E.

<table>
<thead>
<tr>
<th>General contents of periodic statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Contents and value</td>
</tr>
<tr>
<td>(a) As at the beginning of the account period, the total value of the portfolio of the fund, being either:</td>
</tr>
<tr>
<td>(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</td>
</tr>
<tr>
<td>(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.</td>
</tr>
<tr>
<td>(b) As at the end of the account period:</td>
</tr>
<tr>
<td>(i) the number, description and value of each investment held on behalf of the fund;</td>
</tr>
<tr>
<td>(ii) the amount of cash held on behalf of the fund; and</td>
</tr>
<tr>
<td>(iii) the total value of the portfolio of the fund.</td>
</tr>
<tr>
<td>2 Basis of valuation</td>
</tr>
<tr>
<td>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.</td>
</tr>
<tr>
<td>3 Details of any assets loaned or charged</td>
</tr>
<tr>
<td>(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</td>
</tr>
<tr>
<td>(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.</td>
</tr>
<tr>
<td>4 Transactions and changes in composition</td>
</tr>
</tbody>
</table>
| 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.

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

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
| (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 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;
   (b) an EEA AIF; and
   (c) a non-EEA AIF; or

(2) an incoming EEA AIFM branch.

18.5A.2 The adequate information provisions in § COBS 18.5A.11R do not apply to a full-scope UK AIFM of:

(1) a UK ELTIF or an EEA ELTIF; or

(2) an unauthorised AIF which is not a collective investment scheme.

Application or modification of general COBS rules

18.5A.3 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

<table>
<thead>
<tr>
<th>Chapter, section, rule</th>
<th>Full-scope UK AIFM</th>
<th>Incoming EEA AIFM branch</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (Application)</td>
<td>Applies</td>
<td>Applies</td>
</tr>
<tr>
<td>2.1.4R (AIFMs best interest rule)</td>
<td>Applies</td>
<td>Applies</td>
</tr>
<tr>
<td>2.2B (SRD requirements)</td>
<td>Applies</td>
<td>Does not apply</td>
</tr>
<tr>
<td>2.3B (Inducements and research)</td>
<td>Applies, as modified by COBS 18 Annex 1</td>
<td>Applies, as modified by COBS 18 Annex 1</td>
</tr>
<tr>
<td>4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)</td>
<td>Applies</td>
<td>Applies</td>
</tr>
</tbody>
</table>
18.5A.4 (G) 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

Where COBS rules specified in the table in Section 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

Subject to Section 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.8 (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

Only the following provisions in Section 11.2 apply:

(1) COBS 11.2.5G;
(2) COBS 11.2.17G;
(3) COBS 11.2.23AR;
(4) COBS 11.2.24R;
COBS 18 : Specialist Regimes

Section 18.5A : Full-scope UK AIFMs and incoming EEA AIFM branches

(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 or another EEA State, ■ 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;
Section 18.5A : Full-scope UK AIFMs and incoming EEA AIFM branches

(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.

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.
18.5B UCITS management companies

Application

18.5B.1 This section applies to a UCITS management company.

Application or modification of general COBS rules

18.5B.2 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

<table>
<thead>
<tr>
<th>Chapter, section, rule</th>
<th>UCITS management company</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (Application)</td>
<td>Applies</td>
</tr>
<tr>
<td>2.1.1 (The client’s best interests rule)</td>
<td>Applies</td>
</tr>
<tr>
<td>2.2B (SRD requirements)</td>
<td>Applies</td>
</tr>
<tr>
<td>2.3 (Inducements relating to business other than MiFID, equivalent third country or optional exemption business)</td>
<td>Applies, as modified by COBS 2.3.1AR and COBS 2.3.2AR</td>
</tr>
<tr>
<td>2.3B (Inducements and research)</td>
<td>Applies, as modified by COBS 18 Annex 1</td>
</tr>
<tr>
<td>2.4 (Agent as client and reliance on others)</td>
<td>Applies</td>
</tr>
<tr>
<td>4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)</td>
<td>Applies</td>
</tr>
<tr>
<td>5.2 (E-commerce)</td>
<td>Applies</td>
</tr>
<tr>
<td>11.2B (Best execution for UCITS management companies)</td>
<td>Applies</td>
</tr>
<tr>
<td>11.3 (Client order handling)</td>
<td>Applies</td>
</tr>
<tr>
<td>11.7 (Personal account dealing)</td>
<td>Applies</td>
</tr>
<tr>
<td>11 Annex 1EU (Regulatory technical standard 28)</td>
<td>Applies as rules</td>
</tr>
<tr>
<td>18.5B (UCITS management companies)</td>
<td>Applies</td>
</tr>
<tr>
<td>18 Annex 1 (Research and inducements for collective portfolio managers)</td>
<td>Applies</td>
</tr>
</tbody>
</table>
(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

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.

(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

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

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 or another EEA State, COBS 5.1 applies specific requirements for that activity.
18.6 Lloyd's

Application

18.6.1 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 Only COBS 3 (Client categorisation) and the financial promotion rules apply when a firm is carrying out Lloyd's market activities.

18.6.3 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 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 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  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  COBS 3 applies (subject to COBS 18.6A.3) when a firm is carrying on insurance risk transformation and/or activities directly arising from insurance risk transformation.

Definitions and modifications

18.6A.3  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 3.2.1 is modified as set out in COBS 18.6A.3(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  For the avoidance of doubt, the remainder of COBS 3.2 and COBS 3.6 applies.

Communications with clients

18.6A.5  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

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:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Acting honestly, fairly and professionally</td>
</tr>
<tr>
<td>2.3</td>
<td>Inducements, except COBS 2.3.1 R (2)(b) and COBS 2.3.2 R</td>
</tr>
<tr>
<td>4</td>
<td>Communication to clients including financial promotions, but only in relation to communicating or approving a financial promotion</td>
</tr>
<tr>
<td>11.7</td>
<td>Personal account dealing</td>
</tr>
</tbody>
</table>
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

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) (References in COBS to the MiFID Org Regulation) applies where a COBS provision marked “EU” applies to an OPS firm.

General rule

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

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

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

**Modification of inducement rules specified in Table 1**

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**

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**.
Modification of inducement rules specified in Table 2

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

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

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>
<thead>
<tr>
<th>Table 3</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.1R</td>
<td>Client’s best interests rule</td>
</tr>
<tr>
<td>9.2.1R</td>
<td>Assessing suitability: the obligations</td>
</tr>
<tr>
<td>9.2.2R</td>
<td>Assessing suitability: the obligations</td>
</tr>
<tr>
<td>9.2.3R</td>
<td>Assessing suitability: the obligations</td>
</tr>
<tr>
<td>9.2.4R</td>
<td>Assessing suitability: the obligations</td>
</tr>
<tr>
<td>9.2.5R</td>
<td>Reliance on information</td>
</tr>
<tr>
<td>9.2.6R</td>
<td>Insufficient information</td>
</tr>
<tr>
<td>9.2.7G</td>
<td>Insufficient information</td>
</tr>
<tr>
<td>9.3.1G</td>
<td>Guidance on assessing suitability</td>
</tr>
<tr>
<td>9.3.2G</td>
<td>Churning and switching</td>
</tr>
<tr>
<td>9.5.1G</td>
<td>Record keeping and retention periods for suitability records</td>
</tr>
</tbody>
</table>

Modification of suitability rules

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

(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](#)(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](#)(c).
Best execution

18.8A.13 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 The provisions in COBS 11.2A (Best execution – MiFID provisions) marked “EU” and COBS 11 Annex 1EU (Regulatory Technical Standard 28) apply to an OPS firm to which (1) applies as if they were rules.

Modification of best execution rules

18.8A.15 (1) The reference to the inducement requirements in COBS 11.2A.19R is to be construed as a reference to, as applicable, the inducement requirements applying to an OPS firm pursuant to either:

(a) COBS 18.8A.5R; or

(b) COBS 18.8A.7R.

(2) The requirement in COBS 11.2A.34EU (see article 65(6) of the MiFID Org Regulation) to make public for each class of financial instruments:

(a) the top five investment firms used by an OPS firm to execute client orders; and

(b) information on the quality of execution obtained, applies in accordance with (3).

(3) The information to be made public under (2) must:

(a) be published for the first time no later than 30 April 2019 and then annually no later than 30 April of each subsequent year; and

(b) relate to the calendar year immediately preceding the year in which the information is being made public.

(4) In COBS 11.2A, a reference to:

(a) “investment service” is to be construed as a reference to any OPS activity falling within the scope of COBS 18.8A.13R;

(b) “portfolio management” in COBS 11.2A.34EU (see article 65(1) of the MiFID Org Regulation) is to be construed as a reference to OPS activity falling within the scope of COBS 18.8A.13R and which involves the OPS firm placing orders with other entities for execution that result from decisions by the OPS firm to deal in financial instruments on behalf of its client; and

(c) “reception and transmission of orders” is to be construed as a reference to OPS activity falling within the scope of COBS 18.8A.13R and which involves the transmission of client orders to other entities for execution.
**Client order handling**

**18.8A.16** The COBS provisions in §COBS 11.3 (Client order handling) apply to an **OPS firm**, as modified by this rule.

(2) The provisions in §COBS 11.3 (Client order handling) marked “EU” apply to an **OPS firm** as if they were rules.

(3) A rule in §COBS 11.3 which applies only to a UCITS management company or a management company does not apply to an **OPS firm**.

(4) A reference to “financial instrument” is to be construed as a reference to a designated investment (other than a P2P agreement).

**Personal account dealing**

**18.8A.17** 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** 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.

<table>
<thead>
<tr>
<th>Information to be included in a periodic statement provided by an <strong>OPS firm</strong> conducting <strong>OPS activity</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Investment objectives</td>
</tr>
<tr>
<td>(b) Details of any asset loaned or charged</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

| (c) | ceived during the account period in respect of loans or borrowings made during that period and a comparison with the previous period.  
|     | 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.  

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Record keeping: general

18.8A.19  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  (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  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 an incoming EEA AIFM branch; or

(3) ■ COBS 18.5B.2R if the operator is a UCITS management company.
18.10 UCITS qualifiers, AIFM qualifiers and service companies

18.10.1 The COBS provisions in the table apply to a UCITS qualifier and a service company:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Communications to clients, but only in relation to communicating or approving a financial promotion</td>
</tr>
<tr>
<td>5.2</td>
<td>E-Commerce</td>
</tr>
<tr>
<td>12.4</td>
<td>Research recommendations: required disclosures</td>
</tr>
</tbody>
</table>

18.10.2 COBS 4 and COBS 12.4 apply to an AIFM qualifier.
18.11 Authorised professional firms

18.11.1 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.

18.11.2 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 implement 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 implement 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.
For COBS 18.11.2R(3) if a rule implements a requirement of the IDD, a note ("Note:") follows the rule indicating which provision is being implemented.

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.

The rules on approving financial promotions continue to apply.
18.12 Operating an electronic system in relation to lending

Application

18.12.1 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 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 The purpose of this chapter is to ensure that, where applicable, a firm:

   (1) prices and values P2P agreements fairly and appropriately;

   (2) will prevent lenders being exposed to risk outside of the parameters advertised at the time of investment;

   (3) has a reasonable basis to conclude that a target rate can be reasonably achieved; and

   (4) can support the statements made in its disclosures and financial promotions.

Interpretation

18.12.4 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 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 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 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 (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
(g) 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 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 A firm must:

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;

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;

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;

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;

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
Section 18.12: Operating an electronic system in relation to lending

Pricing, allocation and portfolio composition

18.12.11  
Where a firm determines the price of a P2P agreement it must ensure that the price is fair and appropriate.

18.12.12  
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  
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  
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  
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  
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  
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 
(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 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 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 A firm must ensure that each outcomes statement remains publicly available for at least 10 years from publication.

18.12.22 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.

**Content of an outcomes statement**

18.12.23 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 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

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

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

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

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:
   a. the possibility that P2P agreements may cease to be managed and administered before they mature;
   b. 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
(c) 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  
(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  
(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  
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
   (c) 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

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

(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.
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

(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
   (f) a description of how that money will be treated in the event of the firm’s insolvency.

(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.

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

(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**

A *firm* which offers a *contingency fund* must make public on a quarterly basis the following facts about how the fund is performing:

1. the size of the fund compared to total amounts outstanding on *P2P agreements* relevant to the *contingency fund*;
2. what proportion of outstanding borrowing under *P2P agreements* has been paid using the *contingency fund*; and
3. 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**

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*.

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 and an incoming EEA AIFM branch, 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 of 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 2.38 (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, an incoming EEA AIFM branch 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.

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.

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”;
   (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”;

(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, full-scope UK AIFMs and incoming EEA AIFM branches; 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.
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<tr>
<th>Paragraph</th>
<th>Type</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.9</td>
<td>R</td>
<td>An authorised fund manager of an authorised fund must publish the information in paragraph 4.8 in the fund’s prospectus.</td>
</tr>
<tr>
<td>4.10</td>
<td>G</td>
<td>(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).</td>
</tr>
<tr>
<td>4.11</td>
<td>R</td>
<td>(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.</td>
</tr>
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</table>

**Periodic disclosure of the research payment account to investors**

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Type</th>
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<tbody>
<tr>
<td>4.12</td>
<td>R</td>
<td>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.</td>
</tr>
<tr>
<td>4.13</td>
<td>R</td>
<td>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.</td>
</tr>
<tr>
<td>4.13</td>
<td>G</td>
<td>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).</td>
</tr>
<tr>
<td>4.14</td>
<td>R</td>
<td>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.</td>
</tr>
</tbody>
</table>
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 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 indicator 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
<table>
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<tr>
<th>(10)</th>
<th>Venue identification</th>
<th>Identification of the venue where the transaction was executed.</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>That identification must consist of: where the venue is a trading venue, its unique harmonised identification code; otherwise, the code ‘OTC’.</td>
</tr>
</tbody>
</table>

The counterparty is a regulated market, an MTF or an entity acting as central counterparty, 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.
Chapter 19

Pensions supplementary provisions
19.1 Pension transfers, conversions, and opt-outs

Application

This section applies to a firm which gives advice on pension transfers, pension conversions and pension opt-outs to a retail client in relation to:

1. a pension transfer from a scheme with safeguarded benefits;
2. a pension conversion; or
3. a pension opt-out from a scheme with safeguarded benefits or potential safeguarded benefits.

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.

Definitions

In this section and in COBS 19 Annex 4A, 4B and 4C:

1. “appropriate pension transfer analysis” refers to the analysis prepared in accordance with COBS 19.1.2BR;
2. “ceding arrangement” refers to the retail client’s existing pension arrangement with safeguarded benefits;
3. “future income benefits” refers to the full value of the pension income that would have been paid by the ceding arrangement (that is, before any commutation for a lump sum);
4. “proposed arrangement” refers to the arrangement with flexible benefits to which the retail client would move and takes into account the subsequent intended pattern of decumulation;
5. “transfer value comparator” refers to a comparison prepared in accordance with COBS 19.1.3AR.
**Requirement for pension transfer specialist**

19.1A

(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**

19.1B

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**

19.1C

(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.

19.1D

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.

**Appropriate pension transfer analysis**

19.2 [deleted]

19.2A [deleted]
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; and
3. undertake the analysis in (1) and (2) in accordance with COBS 19 Annex 4A and COBS 19 Annex 4C.

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.

(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.

(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.

[deleted]

Transfer value comparator

(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:
(a) where the retail client has 12 months or more before reaching normal retirement age, use the notes set out at COBS 19 Annex 5 1.2R; or

(b) where the retail client has less than 12 months before reaching normal retirement age, use the notes set out at COBS 19 Annex 5 1.3R.

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.

Working with another adviser

19.1.6A  ........................................................................................................................................

(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

[deleted]

19.1.7A

[deleted]

19.1.7B

[deleted]

Record keeping and suitability reports

19.1.7C

If a firm arranges a pension transfer or pension opt-out for a retail client without making a personal recommendation it must:

1. make a clear record of the fact that no personal recommendation was given to that client; and

2. retain this record indefinitely.

19.1.8

If a firm provides a suitability report to a retail client in accordance with COBS 9.4.1R 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

If a firm proposes to advise a retail client not to proceed with a pension opt-out, it should give that advice in writing.

The statutory advice requirement

19.1.10

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

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.
19.2 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; and

(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.

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 (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

In this section:

(1) 'fact sheet' means the Money Advice Service fact sheet or a statement provided by a firm that gives materially the same information;

(1A) 'Money Advice Service fact sheet' means the guide “Your pension: it’s time to choose”, available on [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.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.
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;

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.

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 single page summary document; and
   - appropriate retirement risk warnings.

(2) All other open market options statements must include:
   - a single page summary document;
   - a fact sheet;
   - appropriate retirement risk warnings;
   - 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**

> (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.

**19.4.6B**

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 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 Money Advice Service 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.

19.4.7 An open market options statement must not include financial promotions for a pension decumulation product.

Retirement risk warnings

19.4.8A 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 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.
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.

(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

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).

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.

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.

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.
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

(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

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.

The reminder must not include financial promotions for a pension decumulation product.

Key features illustrations

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

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.

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;
4. the client’s state of health; and
5. the client’s lifestyle choices.

Communications about drawdown and uncrystallised funds pension lump sum options

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:
   - the extent to which any income is guaranteed; and
   - 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

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 Money Advice Service 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 *Money Advice Service* 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.
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**

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.

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

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

In this section:

(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:
  
  manufactured by F1; or
  
  manufactured by another firm (F2);

(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;

(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:
  
  the exercise of a firm’s voting rights in those investments; and
  
  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 19.5R(2), COBS 19.5R(2A), COBS 19.5R(2B),
Interpretation

In this section “administration charges” and “transaction costs” have the same meaning as in COBS 19.8.1R.

Purpose

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

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

1. If a firm considers it appropriate, it may establish a governance advisory arrangement instead of an IGC, having regard to:

   for a relevant scheme operator, the size, complexity and nature of the relevant scheme it operates; or

   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

(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 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:
   - relevant policyholders and any other members or clients a firm asks the IGC to consider; or
   - 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:
   - whether default investment strategies within those schemes:
     - are designed and executed in the interests of relevant policyholders;
     - have clear statements of aims and objectives;
   - 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;
   - whether core scheme financial transactions are processed promptly and accurately;
   - the levels of charges borne by relevant policyholders;
   - the direct and indirect 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, including transaction costs; and
   - whether the communications to relevant policyholders are fit for purpose and properly take into account the relevant policyholders’ characteristics, needs and objectives;

2A. The IGC will assess the ongoing value for money for pathway investors delivered by a pathway investment particularly, though not exclusively, through assessing:
   - whether the pathway investment offered by the firm:
     - is designed and managed in the interests of pathway investors; and
     - has a clear statement of aims and objectives;
   - 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;
   - whether core financial transactions are processed promptly and accurately;
   - the levels of charges borne by pathway investors;
   - the direct and indirect 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, including transaction costs; and
   - whether the communications to pathway investors are fit for purpose and properly take into account the pathway investors’ characteristics, needs and objectives;
(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;

(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:

(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

(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);

(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 31 July 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; and

(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.
Interests of relevant policyholders or pathway investors and consideration of adequacy and quality of a policy

19.5.6

(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 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.

(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.

(8) 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.

(9) 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 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 19.5.5 R (4) and COBS 19.5.6 G (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.

(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 **G** 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 **G** 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.
(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

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 31 July 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.

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
Section 19.5: Independent governance committees (IGCs) and publication and disclosure of costs and charges

19.5.15 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.

<table>
<thead>
<tr>
<th>Years</th>
<th>Default Arrangement</th>
<th>Fund A</th>
<th>Fund B</th>
<th>Fund C</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Before charges + costs deducted</td>
<td>Before charges + costs deducted</td>
<td>Before charges + costs deducted</td>
<td>Before charges + costs deducted</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>3</td>
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<tr>
<td>10</td>
<td></td>
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<td></td>
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<tr>
<td>15</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**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 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 This section applies to an operator of a qualifying scheme.

19.6.2 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 (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 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.

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.

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.

This is the table referred to in ▼ COBS 19.6.6 R.

<table>
<thead>
<tr>
<th>Contribution percentage charge rate (%)</th>
<th>Accrued rights charge rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 or lower</td>
<td>0.6</td>
</tr>
<tr>
<td>Higher than 1 but no higher than 2</td>
<td>0.5</td>
</tr>
<tr>
<td>Higher than 2 but no higher than 2.5</td>
<td>0.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Flat-fee charge (£)</th>
<th>Accrued rights charge rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 or less</td>
<td>0.6</td>
</tr>
<tr>
<td>More than 10 but no more than 20</td>
<td>0.5</td>
</tr>
<tr>
<td>More than 20 but no more than 25</td>
<td>0.4</td>
</tr>
</tbody>
</table>

Compliance with the restrictions on charges

(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 This section applies to an operator of a personal pension scheme or a stakeholder pension scheme.

Purpose

19.6A.2 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 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 (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  

(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 Retirement risk warnings

Definitions

19.7.1 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.

Application

19.7.2 This section applies to a firm communicating with a retail client in relation to accessing their pension savings using a pension decumulation product.

19.7.3 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, 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**

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.

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:
   1. access pension savings using a *drawdown pension*; or
   2. 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*; or

5. withdraw the funds in full from their pension savings, reducing the value of their rights to zero.

### Step 1: determine whether the client has received guidance or regulated advice

19.7.8 **R**

(1) The first step is to ask the *retail client* whether they have received *pensions guidance* or regulated advice:

   a. if the *client* says that they have, the *firm* must proceed to step 2; or
(b) if the client says that they have not or is unsure, the firm must explain that the decision to access pension savings is an important one and encourage the retail client to use pensions guidance or to take regulated advice to understand their options at retirement.

(2) If, after giving the explanation in COBS 19.7.8R (1)(b), the retail client does not want to access pensions guidance or take regulated advice, the firm must proceed to step 2.

**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**

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.

A firm must prepare the retirement risk warnings required by COBS 19.7.13R in good time before taking the steps for the first time, and must keep them up to date.

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**

When communicating the signpost and retirement risk warnings, the firm must do so clearly and prominently.

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.

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

Firms must record whether the retail client has received:

1. the retirement risk warnings at step 3 of the process specified in this section;
2. regulated advice; and
3. pensions guidance.
19.8 Disclosure of transaction costs and administration charges in connection with workplace pension schemes

Interpretation

In this section:

(1) ‘administration charges’, in relation to a member of a pension scheme, means any of the following to the extent that they may be used to meet the administrative expenses of the scheme, to pay commission or in any other way that does not result in the provision of pension benefits for or in respect of members:

(a) any payments made to the scheme by, or on behalf or in respect of, the member; or

(b) any income or capital gain arising from the investment of such payments; or

(c) the value of the member’s rights under the scheme;

but an administration charge does not include any charge made for costs:

(d) incurred directly as a result of buying, selling, lending or borrowing investments; or

(e) incurred solely in providing benefits in respect of the death of such a member; or

(f) incurred in complying with a court order, where that order has provided that the operator, trustee or manager of the scheme may recover those costs; or

(g) arising from earmarking orders or pension sharing arrangements pursuant to regulations made under section 24 or section 41 of the Welfare Reform and Pensions Act 1999.

(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.
Section 19.8: Disclosure of transaction costs and administration charges in connection with workplace pension schemes

(4) ‘transaction costs’ are costs incurred as a result of the buying, selling, lending or borrowing of investments.

Application

19.8.2 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 (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 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 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 (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 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

(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

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:

\[ \text{transaction cost} = (EP - AP) \times (\text{units}) \]

(3) where an investment is sold:

\[ \text{transaction cost} = (AP - EP) \times (\text{units}) \]

Arrival Price (AP)

19.8.10

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

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

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.

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)

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.
COBS 19 : Pensions

Section 19.8 : Disclosure of transaction costs and administration charges in connection with workplace pension schemes

**Calculation of transaction costs for lending and borrowing transactions**

19.8.17  
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  
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  
To determine the transaction cost of a borrowing transaction, a firm must use the amount paid for the loan.

**Aggregation**

19.8.20  
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 19.8.21R); and

2. the sum of the transaction costs for lending and borrowing transactions.

**Treatment of anti-dilution mechanisms**

19.8.21  
Subject to 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  
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  
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 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

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

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.
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 the Money Advice Service 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.
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

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

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.

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.

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).

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

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 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 When a firm is required to generate a market-leading pension annuity quote it may use:

(1) the facility on the Money Advice Service website; 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.

[Editor’s note: the facility in (1) is at www.moneyadviseservice.org.uk/annuitiesquotes.]

Requirement to provide another firm with information pursuant to COBS 19.9.4R(7) and COBS 19.9.7R

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 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 (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 (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.
Retirement risk warnings - steps to take

This annex belongs to COBS 19.7.

COBS 19 Annex 1G
Retirement risk warnings – steps to take

**Trigger**

When a retail client decides to access their pension savings by taking one of the actions in COBS 19.7.7R.

**Step 1**

- **Yes**: Firm to ask whether the client has taken pensions guidance or received regulated advice.
- **No or unsure**: Firm to explain that the decision to access pension savings is an important one and encourage the client to use pensions guidance or to take regulated advice to understand their options at retirement.

**Step 2**

Based on how the client wants to access their pension savings, the firm must ask the client questions to identify whether risk factors are present.

**Step 3**

Firm to give the client appropriate retirement risk warnings in response to the client’s answers to the firm’s questions.
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

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matters to be communicated</th>
<th>Contents of communication</th>
<th>When</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.4.5AR</td>
<td>Open market option statement</td>
<td>A statement satisfying the requirements of COBS 19.4.6AR, COBS 19.4.8R and COBS 19.4.10R</td>
<td>Trigger events specified at COBS 19.4.5AR</td>
</tr>
<tr>
<td>19.4.9R</td>
<td>Reminder</td>
<td>A statement satisfying the requirements of COBS 19.4.6R, COBS 19.4.8R and COBS 19.4.10R</td>
<td>At least six weeks before the client’s intended retirement date</td>
</tr>
</tbody>
</table>

Table 2: Requirements for other communications

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of communication</th>
<th>Contents of communication</th>
<th>Trigger</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.4.12R</td>
<td>Pension annuity options</td>
<td>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).</td>
<td>Any communication with a client about their pension annuity options</td>
</tr>
<tr>
<td>19.4.14R</td>
<td>Drawdown pension</td>
<td>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).</td>
<td>Any communication with a client about their drawdown pension options</td>
</tr>
<tr>
<td>19.4.14R</td>
<td>Uncrystallised funds pension lump sum</td>
<td>Relevant information about uncrystallised funds pension lump sum option. Firms may also be required to provide a key</td>
<td>Any communication with a client about their uncrystallised funds pension lump sum options</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of communication</td>
<td>Contents of communication</td>
<td>Trigger</td>
</tr>
<tr>
<td>--------------------</td>
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</tr>
<tr>
<td>19.4.15G</td>
<td>Communications about options to access pension savings</td>
<td><em>Features illustration</em> (COBS 14.2.1R) or <em>signpost pensions guidance</em> (COBS 19.4.16R).</td>
<td>Any communication with a <em>client</em> about their options to access their pension savings.</td>
</tr>
<tr>
<td>19.4.18R</td>
<td><em>Client</em> applies to access pension savings</td>
<td>A <em>firm</em> must provide a description of the tax implications unless it is provided in accordance with COBS 14.2.1R.</td>
<td><em>Firm</em> receives an application from a <em>client</em> to access their pension savings.</td>
</tr>
</tbody>
</table>
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. Format of bar graph in Part 4 (where the purchase price of the pension annuity is depicted)

1.2 When a firm is creating the two bar graphs as set out in Part 4, it must ensure:

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
**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**

- **Firm Logo**

  **Annuity features**

  Purchase price £XXX,XXX  
  Paid quarterly in advance  
  Dependents income  
  No guarantee period  
  Payments increase by 2% per year  
  [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 £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 £XXX. If you select our product, you could be losing out on £BB 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 moneyadvice.service.gov.uk/annuitiesquotes or call 0800 138 7777.

**Company contact details and other key information**
Where a guaranteed quote, a guaranteed annuity rate, a guaranteed minimum pension or section 9(2B) rights offers the highest annual income

<table>
<thead>
<tr>
<th>Firm Logo</th>
<th>keyfacts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annuity features</strong></td>
<td><strong>No guarantee</strong> period</td>
</tr>
<tr>
<td>Purchase price £XX,XXX</td>
<td>Payments <em>increase</em> by 2% per year</td>
</tr>
<tr>
<td>Paid <em>quarterly</em> in advance</td>
<td>[Other key features of annuity]</td>
</tr>
</tbody>
</table>

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.

If 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 EDD 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 [moneyadvisorservice.org.uk/annuitiesquotes](http://moneyadvisorservice.org.uk/annuitiesquotes) or call 0800 138 7777.

*Company contact details and other key information*

**Part 3: Template for cases where 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
### Annuity features

<table>
<thead>
<tr>
<th>Feature</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase price</td>
<td>£XX,XXX</td>
</tr>
<tr>
<td>Payment</td>
<td>quarterly in advance</td>
</tr>
<tr>
<td>Dependents income</td>
<td></td>
</tr>
</tbody>
</table>

**No guarantee period**

Payments increase by 2% per year

[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 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**

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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
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
Part 6: Template for cases where the retail client refuses to answer questions to determine whether the
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.

**Annuity features**

<table>
<thead>
<tr>
<th>Annual Income</th>
<th>£XX,XXX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid</td>
<td>quarterly</td>
</tr>
<tr>
<td>In advance</td>
<td></td>
</tr>
<tr>
<td>Dependants income</td>
<td></td>
</tr>
</tbody>
</table>

**keyfacts**

- No guarantee period
- Payments increase by 2% per year

---

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 moneyadvice.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 moneyadvice.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.

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 arrangements 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.
Transfer value comparator

This annex belongs to COBS 19.1.3AR.

Transfer value comparator

R 1 Where the retail client has 12 months or more before reaching normal retirement age under the rules of the ceding arrangement 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 Where the retail client has less than 12 months before reaching normal retirement age under the rules of the ceding arrangement, the estimated value needed today to purchase the future income benefits using a pension annuity must be determined as the amount in COBS 19 Annex 4B 1R(2) multiplied by the ratio of (1) and (2) where:

(1) is the open market cost of purchasing a pension annuity which offers increases in payment which are the nearest match to those in the ceding arrangement; and

(2) is the value of the pension annuity in (1) where the cost is determined in accordance with the assumptions in COBS 19 Annex 4C 1R(2).

G 3 COBS 19 Annex 4B 2R requires firms to adjust the estimated cost of purchasing the future income benefits using a pension annuity to a market related rate by allowing for the ratio of current market pricing to the theoretical value of the annuity which is the nearest match.

(2) The pension annuity which is the nearest match for the scheme benefits should usually be taken as an index-linked pension annuity unless it can be shown that the majority of the benefits are not index-linked in some way.
Assumptions

This annex belongs to ■ COBS 19.1.2BR and ■ COBS 19.1.3AR.

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%

(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.
(3) The product charges prior to future income benefits coming into payment must be assumed to be: 0.75%

**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.

1.1 The 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.

1.2 Where COBS 19 Annex 4B 1R applies (where the retail client has 12 months or more before reaching normal retirement age), the second page of the transfer value comparator must contain the notes set out at Table 2.

1.3 Where COBS 19 Annex 4B 2R applies (where the retail client has less than 12 months before reaching normal retirement age), the second page of the transfer value comparator must contain the notes set out at Table 3.

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 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 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
This table belongs to COBS 19 Annex 5 1.3R.

Notes
1. The estimated replacement cost of your pension income is based on the current level of your scheme income and the approximate cost of replacing that income (including spouse’s benefits) for an average healthy person from an insurer operating in the UK annuity market. The approximation recognises that it may not be possible to find an exact match for your benefits in the form of an annuity income.
2. It may be possible to get a better deal for your particular circumstances by shopping around.
3. The estimated replacement value takes into account any charges you might be expected to pay.
4. No allowance has been made for taxation.
20.1 Application

This chapter applies to a firm carrying on with-profits business, except to the extent modified in the following rules.

20.1.1 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

For an EEA insurer:

(1) (a) the rules and guidance on the with-profits fund (COBS 20.1A), 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), and the governance provisions in COBS 20.5. apply only in so far as responsibility for the matter in question has not been reserved to the firm’s Home State regulator by an EU instrument;

notwithstanding the above:

(b) COBS 20.2.26A R (financial penalties and the with-profits fund) applies;

(c) the rules and guidance on the notification of policyholders where there is a change in the percentage allocation of distributions (COBS 20.2.19A R to COBS 20.2.19C G) apply but only to the extent that the UK is the State of the commitment;
(2) COBS 20.3 (Principles and Practices of Financial Management) does not apply;

(3) the rule on providing information to with-profits policyholders where the United Kingdom is the State of the commitment (COBS 20.4.4 R) applies, but the rest of COBS 20.4 (Communications with with-profits policyholders) does not; and

(4) [deleted]

(5) references in COBS 20 to a with-profits fund or to terms derived from the Solvency II Directive requiring transposition in the Home State, apply as if they were references to the relevant fund or terms established in accordance with the requirements of the Home State.

20.1.3A 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 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

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

(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 (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

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.

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.

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.
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.

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 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.

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.

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.

For the purpose of (1), applying or using an asset includes any obligation (even if only contingent) to apply or use that asset.

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.

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.

Management of the with-profits fund

20.1A.13

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

(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

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

(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

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

(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.

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

Amounts payable under with-profits policies: Maturity payments

20.2.3 R A firm must have good reason to believe that its pay-outs on individual with-profits policies are fair.

In this section, maturity payments include payments made when a with-profits policy provides for a minimum guaranteed amount to be paid.

20.2.4 G

(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:
Section 20.2 : Treating with-profits policyholders fairly

(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.
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

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.

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.

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.

(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.

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
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).

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.

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

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 20.2.19B R (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:

\[
\frac{b \times c}{a} \cdot \frac{c}{50}
\]

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:

\[
\frac{b \times c}{a} \cdot \frac{c}{200}
\]

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 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 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 (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 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 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 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 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 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.

20.2.25C 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 is that a firm may make rectification payments using assets in a with-profits fund.

20.2.25D 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 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 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 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 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).

(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 \(\text{COBS 20.2.28 R}\), 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 \(\text{COBS 20.2.28 R}\) 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 \(\text{COBS 20.2.28 R}\) will not, in general, include increments on existing policies or business written as a result of the exercise of options by an existing policyholder.

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.

(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.

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

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  ■  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.
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.

(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.

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 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 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 (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 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 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.

20.2.43 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

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 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 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 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

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.

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

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

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 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 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 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 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 (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.
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.

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.

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.

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.

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.

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 mutuels 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 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.

[deleted]
Scope and content of PPFM

A firm’s PPFM must cover the issues set out in the table in COBS 20.3.6 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.

Table: Issues to be covered in PPFM

<table>
<thead>
<tr>
<th>Subject</th>
<th>Issues</th>
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<tbody>
<tr>
<td>(1) Amount payable under a with-profits policy</td>
<td>Methods used to guide determination of the amount that is appropriate to pay individual with-profits policyholders, including:</td>
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<td>(a)</td>
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<td>(i)</td>
<td>the aims of the methods and approximations used;</td>
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<td>(ii)</td>
<td>how the current methods, including any relevant historical assumptions used and any systems maintained to deliver results of particular methods, are documented; and</td>
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<td>(iii)</td>
<td>the procedures for changing the current method or any as</td>
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<td>Subject</td>
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<td>sumptions or parameters relevant to a particular method.</td>
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<td>(b)</td>
<td>Approach to setting bonus rates.</td>
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<td>(c)</td>
<td>Approach to smoothing maturity payments and surrender payments, including:</td>
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<td>(i) the smoothing policy applied to each type of with-profits policy;</td>
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<td>(ii) the limits (if any) applied to the total cost of, or excess from, smoothing; and</td>
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<td>(iii) any limits applied to any changes in the level of maturity payments between one period to another.</td>
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<tr>
<td>(2) Investment strategy</td>
<td>Significant aspects of the firm’s investment strategy for its with-profits business or, if different, any with-profits fund, including:</td>
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<td></td>
<td>(a) the degree of matching to be maintained between assets relevant to with-profits business and liabilities to with-profits policyholders and other creditors;</td>
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<td>(b) the firm’s approach to assets of different credit or liquidity quality and different volatility of market values;</td>
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<td>(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</td>
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<td>(d) the firm’s controls on using new asset or liability instruments and the nature of any</td>
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<td>Subject</td>
<td>Issues</td>
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<tr>
<td>(3) Business risk</td>
<td>The exposure of the <em>with-profits business</em> to business risks (new and existing), including the firm's:</td>
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<tr>
<td>(a)</td>
<td>procedures for deciding if the <em>with-profits business</em> may undertake a particular business risk;</td>
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<td>(b)</td>
<td>arrangements for reviewing and setting a limit on the scale of such risks; and</td>
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<td>(c)</td>
<td>procedures for reflecting the profits or losses of such business risks in the amounts payable under <em>with-profits policies</em>.</td>
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<td>(4) Charges and expenses</td>
<td>(a) The way in which the firm applies charges and apportionments expenses to its <em>with-profits business</em>, including, if material, any interaction with connected firms.</td>
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<td>(b)</td>
<td>The cost apportionment principles that will determine which costs are, or may be, charged to a <em>with-profits fund</em> and which costs are, or may be, charged to the other parts of its business of its shareholders.</td>
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<tr>
<td>(5) Management of inherited estate</td>
<td>Management of any <em>inherited estate</em> and the uses to which the firm may put that <em>inherited estate</em>.</td>
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<tr>
<td>(6) Volumes of new business and arrangements on stopping taking new business</td>
<td>If a firm's <em>with-profits fund</em> is accepting new <em>with-profits business</em>, 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.</td>
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<td>(7) Equity between the with-profits fund and any shareholders</td>
<td>The way in which the interests of <em>with-profits policyholders</em> are, or may be, affected by the interests of any shareholders of the firm.</td>
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</table>

20.3.7 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.
<table>
<thead>
<tr>
<th>Reference to PPFM issues (COBS 20.3.6R)</th>
<th>With-profits principles</th>
<th>With-profits practices</th>
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<tbody>
<tr>
<td>(1) Amount payable under a with-profits policy</td>
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<td>General</td>
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<td>(a) Circumstances under which any historical assumptions or parameters, relevant to methods used to determine the amount payable, may be changed;</td>
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</table>
With-profits principles

Reference to PPFM issues (COBS 20.3.6R)  With-profits principles  With-profits practices

or apportioned in some other way;
(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

(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

Bonus rates

(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 reset 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
<table>
<thead>
<tr>
<th>Reference to PPFM issues (COBS 20.3.6R)</th>
<th>With-profits principles</th>
<th>With-profits practices</th>
</tr>
</thead>
<tbody>
<tr>
<td>(d) Statement as to whether smoothing is intended to be neutral over time.</td>
<td>Smoothing</td>
<td>Smoothing</td>
</tr>
<tr>
<td>(a) How the types, classes or mix of assets are determined; and</td>
<td>(c) Whether and to what extent there is hypothecation of assets;</td>
<td></td>
</tr>
<tr>
<td>(b) Strategy in respect of derivatives and other instruments.</td>
<td>(d) Period between formal reviews of investment strategy;</td>
<td></td>
</tr>
<tr>
<td>(2) Investment strategy</td>
<td>(e) Approach to investment in different asset classes, and assets of different credit or liquidity quality, including assets not normally traded; and</td>
<td></td>
</tr>
<tr>
<td>(f) Details of any external support available to the with-profits fund and how this affects the investment strategy.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) Business risk</td>
<td>(a) Where a firm explicitly excludes business risk from a class of with-profits policies but there are residual</td>
<td>(c) Current limits which apply to the taking on of business risk; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) Whether and to what extent particular</td>
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</tbody>
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### Reference to PPFM issues (COBS 20.3.6R)

<table>
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</thead>
<tbody>
<tr>
<td>risks, clarification where these risks such as guarantee and smoothing costs are borne; and (b) Define where compensation costs from a business risk would be borne.</td>
<td>generations of with-profits policyholders or classes of with-profits 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.</td>
</tr>
</tbody>
</table>

### (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 (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 in-
Reference to PPFM issues (COBS 20.3.6R) | With-profits principles | With-profits practices
--- | --- | ---
(6) Equity between the with-profits fund and any shareholders | with the *inherited estate* 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.
| (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 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 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 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 In relation to any with-profits policyholder where the state of the commitment is the United Kingdom, an EEA insurer must:

(1) provide the information necessary to enable that policyholder properly to understand the insurer’s commitment under the policy,
(2) ensure that the information provided is not narrower in scope or less detailed in content than the information required to be provided in the **PPFM** produced by a firm subject to section 20.3; and

(3) send the policyholder who is affected by any information being changed written notice, setting out:

(a) any proposed changes to information that is equivalent to the **with-profits principles**, three months in advance of the effective date; and

(b) any changes to information that is equivalent to the **with-profits practices**, within a reasonable time.

**Annual report to with-profits policyholders**

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.

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**.

In preparing the annual report to **with-profits policyholders**, a firm should take advice from a with-profits actuary.

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.
20.5 With-profits governance

Requirement to appoint a with-profits committee or advisory arrangement

20.5.1 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 (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

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.

(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

(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

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
21.1 Application

The rules in this section apply on an ongoing basis to linked long-term contracts that are effected by:

(1) insurers other than EEA insurers; and

(2) EEA insurers in the United Kingdom.

Limit to the application of COBS 21.3

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.
21.2 Rules for firms engaged in linked long-term insurance business

21.2.1 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 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 Insurers other than EEA 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

21.2.3

21.2.4 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 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 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
(2) suitably monitor the way the reinsurer manages the business in order to discharge its continuing responsibilities to policyholders.

Notification to the FCA

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.

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 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 to COBS 21.3.8;
(i) cash;
(j) permitted units;
(k) permitted stock lending;
(l) permitted derivatives contracts; and
(m) conditional permitted links.

21.3.1A 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 (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).

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 A firm should assess the liquidity of a money-market instrument in accordance with CESR’s UCITS eligible assets guidelines, with respect to article 4(1) of the UCITS eligible assets Directive.

Permitted stock lending transactions

21.3.9 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 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 (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 by a Home State regulator; 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 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**;

2. for an *insurer* which is not a *Solvency II firm*, satisfies **INSPRU 3.2.5** to **INSPRU 3.2.35A** with the exception of **INSPRU 3.2.18**;

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 *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 A *conditional permitted link* is any of the following property where the conditions in **COBS 21.3.16** are met:

1. *conditional permitted unlisted securities*;
2. *conditional permitted immovables*;
3. *conditional permitted loans*; and
4. *conditional permitted scheme interests*.

21.3.16 The conditions for the property in **COBS 21.3.15** 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.

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:
(a) change the property to which the benefits of the linked long-term contract of insurance are linked;
(b) 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
(c) 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.

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 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.

Conditional permitted links: requirements

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.
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 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
22.2 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 EEA 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 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.

22.2.4 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: ”

22.2.4 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.

<table>
<thead>
<tr>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certified high net worth investor</td>
<td>(a) An individual who meets the requirements set out in COBS 4.12.6R; or</td>
<td>The firm must consider that the mutual society share is likely to be suitable for that individual, based on a pre-</td>
</tr>
<tr>
<td>Title</td>
<td>Type of retail client</td>
<td>Additional conditions</td>
</tr>
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</tbody>
</table>
| Certified sophisticated investor | (b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.6R; or  
(c) 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) or (b) above. | liminary assessment of that individual's profile and objectives (see COBS 4.12.5G(2)). |
| Self-certified sophisticated investor | (a) An individual who meets the requirements set out in COBS 4.12.7R; or  
(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.7R; or  
(c) an individual who meets the requirements for either (a) or (b) 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. |
COBS 22 : Restrictions on the distribution of certain complex investment products

<table>
<thead>
<tr>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
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<tbody>
<tr>
<td></td>
<td>(solely or jointly with others) to make investment decisions on behalf of another person who is the firm’s client.</td>
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</tbody>
</table>

Adaptation of other rules and guidance to mutual society shares

22.2.5  
(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  
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.
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.
22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

Restrictions

22.3.1 (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 EEA; 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 EEA.

(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 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.

<table>
<thead>
<tr>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certified high net worth investor</td>
<td>(a) An individual who meets the requirements set out in COBS 4.12.6R; or (b) An individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.6R; or</td>
<td>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)).</td>
</tr>
</tbody>
</table>
### COBS 22 : Restrictions on the distribution of certain complex investment products

**Section 22.3 : Restrictions on the retail distribution of contingent convertible instruments and CoCo funds**

<table>
<thead>
<tr>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certified sophisticated investor</td>
<td>(c) 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) or (b) above</td>
<td>Not applicable.</td>
</tr>
<tr>
<td></td>
<td>(a) An individual who meets the requirements set out in COBS 4.12.7R; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) An individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.7R; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) An individual who meets the requirements for either (a) or (b) 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.</td>
<td></td>
</tr>
<tr>
<td>Self-certified sophisticated investor</td>
<td>(a) An individual who meets the requirements set out in COBS 4.12.8R; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) An individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.8R; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) An individual who meets the requirements for either (a) or (b) 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.</td>
<td></td>
</tr>
<tr>
<td>Solicited advice</td>
<td>Any retail client.</td>
<td></td>
</tr>
</tbody>
</table>

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)).

The restrictions do not apply provided all of the following requirements are met:
### COBS 22 : Restrictions on the distribution of certain complex investment products

#### Section 22.3 : Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

<table>
<thead>
<tr>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a) there is no invitation or inducement to participate in, acquire or underwrite the investment other than a personal recommendation on the investment;</td>
<td></td>
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<tr>
<td></td>
<td>(b) the personal recommendation is made following a specific request by that client for advice on the investment; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) the client has not previously received any 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.</td>
<td></td>
</tr>
<tr>
<td>MiFID or equivalent third country business other than financial promotions</td>
<td>Any retail client.</td>
<td>COBS 22.3.1R(2)(a) does not apply to MiFID or equivalent third country business (see COBS 9.3.5G).</td>
</tr>
<tr>
<td>Prospectus</td>
<td>Any retail client.</td>
<td>The restrictions do not apply to the distribution of a prospectus required under the Prospectus Regulation.</td>
</tr>
<tr>
<td>Issuers</td>
<td>Any retail client</td>
<td>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.</td>
</tr>
<tr>
<td>Indirect investment</td>
<td>Any retail client</td>
<td>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-</td>
</tr>
</tbody>
</table>
COBS 22 : Restrictions on the distribution of certain complex investment products

### Title Type of retail client Additional conditions

<table>
<thead>
<tr>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>mainstream pooled investment</td>
<td>provided it is not a CoCo fund, or membership of an occupational pension scheme.</td>
</tr>
</tbody>
</table>

**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**  
(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**  
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**  
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
COBS 22 : Restrictions on the distribution of certain complex investment products

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 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

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.

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.

For the avoidance of doubt, in § COBS 22.4.1, “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

(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 Subject to (2), COBS 22.5.1AR, COBS 22.5.1BG and COBS 22.5.1CR 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) This section does not apply to the marketing, distribution or sale of restricted speculative investments to a retail client in another EEA State to the extent that those activities are subject to stricter requirements imposed under article 42 of MiFIR by the competent authority of that EEA State.

22.5.1A 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 For the avoidance of doubt, the exclusion in COBS 22.5.1AR only applies to F.

22.5.1C The rules in this section do not apply to the sale and distribution of restricted options by an EEA MiFID investment firm (EEAMIF) in circumstances where:

(1) the EEAMIF has not marketed, nor caused to be marketed, the restricted option in the United Kingdom; and

(2) the retail client is in the United Kingdom and has approached the EEAMIF at their own exclusive initiative.

22.5.2 The rule in COBS 22.5.1R(2) means that a firm does not need to comply with the rules in this section to the extent that the marketing, distribution or sale by that firm is subject to a stricter requirement in the retail client’s state. For instance:

Where a firm sells a restricted speculative investment to a retail client in an EEA State (A) and A has imposed stricter margin requirements
COBS 22 : Restrictions on the retail distribution of certain complex investment products

for retail clients than those in this section, but the remainder of the requirements imposed by A are the same or less strict than those in this section, then the firm should comply with the stricter margin requirements imposed by A but should still comply with the remainder of the rules in this section.

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 derivative instruments for the transfer of credit risk to which article 85(3) of the Regulated Activities Order applies.

Standardised risk warning

22.5.6 R (1) Subject to 22.5.7R and 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 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.

(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 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:
22.5.7A

(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:
COBS 22 : Restrictions on the distribution of certain complex investment products

Section 22.5 : Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative...

“CFD-retail client accounts generally lose money.”

22.5.8  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  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  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  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;

(4) 50% of the value of the exposure that the trade provides when the underlying asset is a cryptocurrency; or

(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  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

(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.

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.

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.

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).
COBS 22 : Restrictions on the distribution of certain complex investment products

Section 22.5 : Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative...

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).
## COBS TP 1
### Transitional Provisions relating to Client Categorisation

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<td>Material to which the transitional provision applies</td>
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<td>Handbook provisions: coming into force</td>
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<tr>
<td>1.1</td>
<td>COBS 3</td>
<td>G</td>
<td>Overview of transitional provisions for client categorisation</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
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</table>

(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.
1.2 COBS 3 R

Categorisation of existing clients

(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.


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.

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
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<tr>
<td>1.5</td>
<td>COBS 3</td>
<td>R</td>
<td>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.</td>
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<tr>
<td>1.6</td>
<td>COBS 3</td>
<td>R</td>
<td>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.</td>
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</table>
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.

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.

1.9 COBS 3 R Expired
# Conduct of Business Sourcebook

## COBS TP 2
### Other Transitional Provisions

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<tr>
<td>Material to which the transitional provision applies</td>
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<td>Transitional provision</td>
<td>Handbook provisions: dates in force</td>
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<tr>
<td>2.-2</td>
<td>COBS, with the exception of COBS 15</td>
<td>R</td>
<td>Expired</td>
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<tr>
<td>2.-2A</td>
<td>COBS 2.5.1R(1) to (3)</td>
<td>R</td>
<td>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:</td>
<td>From 1 April 2016</td>
<td>On 1 April 2016</td>
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- (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.

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 insur-
### Other Transitional Provisions

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<td>Material to which the transitional provision applies</td>
<td>Transitional provision: dates in force</td>
<td>Hand- book provisions: coming into force</td>
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<td>(1) apply to fees, commission, monetary and non-monetary benefits which are paid, provided or received by a <em>firm</em> in respect of:</td>
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<td>ance-based investment product, 1 October 2018</td>
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<td>(a) (unless (b) applies) services that are provided to a <em>client</em> on or after 3 January 2018;</td>
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<td>(b) (in relation to an insurance-based investment product) services that are provided to a <em>client</em> on or after 1 October 2018; and</td>
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<td>(2) do not apply to fees, commission, monetary or non-monetary benefits which are paid, provided or received in respect of:</td>
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<td>(a) (unless (b) applies) services that are provided to a <em>client</em> before 3 January 2018;</td>
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<td>(b) (in relation to an insurance-based investment product) services that are provided to a <em>client</em> on or after 1 October 2018</td>
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2.-1

| COBS 4 R Expired |
| COBS 4.7.7 R to COBS 4.7.10 R |

2.-1A

| COBS 4.5.12R to 4.5.15R R Expired |

2.-1B

| The *rules* specified in column (2) apply: |
| From 7 May 2019 to 7 August 2019 |

(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.
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<td>Hand- book provisions: coming into force</td>
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<tr>
<td>2.1</td>
<td>COBS 6.1 G</td>
<td>(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.</td>
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<td>(2) Services of an ongoing nature include safe- keeping and administration investments and managing investments,</td>
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<td>2.2</td>
<td>COBS 6.1 G</td>
<td>(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.</td>
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<td>(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.</td>
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<td>COBS 6.1E R</td>
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<td>2.2C</td>
<td>COBS 6.3</td>
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<td>2.2D</td>
<td>COBS 6.3</td>
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<td>COBS 6.3.7 G</td>
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<td>2.4</td>
<td>COBS 10.1.2 R</td>
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<td>COBS 10.1.2 R</td>
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<td>COBS 11.2</td>
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<td>2.4E</td>
<td>COBS 12.2 and COBS 12.3</td>
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<td>2.4F</td>
<td>COBS 12.2 and COBS 12.3</td>
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<td>2.4G</td>
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<td>COBS 12.3</td>
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<td>2.5-A</td>
<td>COBS 13 13.4.1 R</td>
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<tr>
<td>2.5A</td>
<td>COBS 13.4.2 R</td>
<td>R</td>
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<td>2.5AA</td>
<td>COBS 13.5.1 R</td>
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<td>2.5AB</td>
<td>COBS 13.5.2 R</td>
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<td>2.6</td>
<td>COBS 14.1 and COBS 14.2</td>
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<td>2.6A</td>
<td>COBS 14.2 and COBS 14.3</td>
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<td>2.7</td>
<td>COBS 15</td>
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## Other Transitional Provisions

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<td>2.8</td>
<td>COBS 16.3 (Periodic statements)</td>
<td>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.</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
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<tr>
<td>2.8A</td>
<td>COBS 18</td>
<td>R</td>
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<td>2.8B</td>
<td>COBS 18</td>
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<td>2.8C</td>
<td>COBS 18</td>
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<td>2.8D</td>
<td>COBS 18</td>
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<td>COBS 18</td>
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<td>2.8F</td>
<td>COBS 19.4.3</td>
<td>R</td>
<td>[expired]</td>
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<tr>
<td>2.8FA</td>
<td>COBS 19.6AR(4)</td>
<td>R</td>
<td>(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 (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.</td>
<td>1 November 2019 to 31 December 2019</td>
<td>1 November 2019</td>
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<tr>
<td>2.8FB</td>
<td>COBS 19.6AR(4)</td>
<td>G</td>
<td>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.</td>
<td>1 November 2019 to 31 December 2019</td>
<td>1 November 2019</td>
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<td><strong>2.8FC</strong></td>
<td>COBS 199.6AR(4) G</td>
<td>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.</td>
<td>1 November 2019 to 31 December 2019</td>
<td>1 November 2019</td>
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<tr>
<td><strong>2.9</strong></td>
<td>COBS 20.2.1 G to COBS 20.2.23 R; COBS 20.2.26 R to COBS 20.2.41 G R</td>
<td>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.</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
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<tr>
<td><strong>2.9A</strong></td>
<td>COBS 20.2.24 R to COBS 20.2.25A R (Charging payments of compensation and redress to a with-profits fund) R</td>
<td>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.</td>
<td>From 31 July 2009 indefinitely</td>
<td>31 July 2009</td>
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<td><strong>2.10</strong></td>
<td>COBS 20.2.42R (3) (Policyholder advocate: appointment and role) R</td>
<td>Expired</td>
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<td><strong>2.11</strong></td>
<td>COBS TP 2.9 G</td>
<td>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 ar-</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
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<td><strong>Transitional provision: dates in force</strong></td>
<td><strong>Handbook provisions: coming into force</strong></td>
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<td><strong>rangepements if, and to the extent that, it is inconsistent with them.</strong></td>
<td>A <em>firm</em> should be mindful, however, that, even if some or all of these <em>rules</em> are disapplied, the <em>firm</em> is still subject to the <em>rules</em> in the rest of the Handbook, including Principle 6.</td>
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<td>2.12</td>
<td><strong>COBS</strong></td>
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<td>2.13</td>
<td><strong>COBS</strong></td>
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<tr>
<td>2.14</td>
<td><strong>COBS 20.2.24 R to COBS 20.2.25A R</strong></td>
<td>R</td>
<td>(1) <strong>COBS 20.2.24 R to COBS 20.2.25A R</strong> have effect in relation to payments of compensation and redress arising out of events occurring on or after 31 July 2009.</td>
<td>From 31 July 2009 indefinitely</td>
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<td>(2) For payments of compensation and redress arising out of events occurring before 31 July 2009, <strong>COBS 20.2.23 R to COBS 20.2.25 R</strong> apply as they were in force on 30 July 2009.</td>
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<td>2.16</td>
<td><strong>[deleted]</strong></td>
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<td>2.17</td>
<td><strong>COBS 9.4.10 G; COBS 13 Annex 2; COBS 13 Annex 3; COBS 14.2.1 R</strong></td>
<td>G</td>
<td>Expired</td>
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<tr>
<td>2.18</td>
<td><strong>COBS 20.2.53 R to COBS 20.2.60 G, SUP App 2.15G</strong></td>
<td>R</td>
<td>(1) Unless (2) applies, and subject to (3), a <em>firm</em> that has ceased to effect new contracts of insurance in a <em>with-profits fund</em> 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.</td>
<td>From 1 April 2012 indefinitely</td>
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<td>(2) Paragraph (1) does not apply to a <em>firm</em> 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.</td>
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<td>(3) A <em>firm</em> required by (1) above to produce a run-off plan:</td>
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### Other Transitional Provisions

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<td><strong>Transitional provision</strong></td>
<td><strong>Handbook provisions: coming into force</strong></td>
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<td>(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;</td>
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<td>(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;</td>
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<td>(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</td>
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<td>(d) may otherwise tailor the run-off plan to reflect the fact that the fund in question has already been closed.</td>
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#### 2.19 COBS

**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.

#### 2.20 COBS

**R**

Expired

#### 2.21 COBS

**R**

Expired

#### 2.22 COBS

**R**

Expired

#### 2.23 The changes to COBS set out in Annex K of the Alternative Investment...
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<td><strong>Transitional provision</strong></td>
<td><strong>Transitional provision dates in force</strong></td>
<td><strong>Handbook provisions: coming into force</strong></td>
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<tr>
<td><strong>Fund Managers Directive Instrument 2013</strong></td>
<td><strong>2.24 COBS 13 Annex 2</strong></td>
<td>A <em>firm</em> 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)</td>
<td>25 April 2016 to 5 April 2017</td>
<td>6 April 2017</td>
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<td></td>
<td><strong>2.25 COBS 19.6A.5R</strong></td>
<td>COBS 19.6A.5R does not apply where the instruction for the action giving rise to the <em>early exit charge</em> was received by the <em>firm</em> before 31 March 2017.</td>
<td>From 31 March 2017 indefinitely</td>
<td>31 March 2017</td>
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<td><strong>2.26 COBS 17.1.7R</strong></td>
<td>An <em>insurer</em> need not comply with COBS 17.1.7R for contracts entered into or variations agreed before 1 August 2017.</td>
<td>From 1 August 2017</td>
<td>On 1 August 2017</td>
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<td><strong>2.27 The rules and guidance in COBS that relate to a NURS-KII document</strong></td>
<td>Where the <em>authorised fund manager of a non-UCITS retail scheme, or an ICVC that is a non-UCITS retail scheme</em>, 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 <em>key investor information document</em> (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 &quot;NURS-KII document&quot; were a reference to that document.</td>
<td>From 1 January 2018 until 19 February 2018</td>
<td>1 January 2018</td>
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<td></td>
<td><strong>2.28 COBS TP 2.27R</strong></td>
<td>The effect of COBS TP 2.27R is that where a modified form of a <em>key investor information document</em> has been produced for a <em>non-UCITS retail scheme</em> prior to 1 January 2018, <em>firms</em> may continue to use that document for a short period until the <em>AFM of the KII-compliant NURS</em> has had time to produce a replacement NURS-KII document that complies with COLL Appendix 2R.</td>
<td>From 1 January 2018 until 19 February 2018</td>
<td>1 January 2018</td>
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<td><strong>2.29 COBS 19.1.2R to COBS 19.1.4BR</strong></td>
<td>A <em>firm</em> 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 19.1.2HG; COBS 19.1.21F; COBS 19.1.4BR.</td>
<td>1 April 2018 to 30 September 2018</td>
<td>1 October 2018</td>
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### COBS Other Transitional Provisions

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<td>Material to which the transitional provision applies</td>
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<td>Hand- book provisions: coming into force</td>
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<td>19.1.3AR; COBS 19.1.3BG; COBS 19 Annex 4A; COBS 19 Annex 4B; COBS 19 Annex 4C; COBS 19 Annex 5.</td>
<td>If a <em>firm</em> does so, the reference to “comparison” in COBS 19.1.7BG must be read as a reference to “appropriate pension transfer analysis”.</td>
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<tr>
<td>2.29A</td>
<td>COBS</td>
<td>R</td>
<td>19.5.5R(8) and 19.5.13R(1)</td>
<td>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.</td>
<td>1 April 2020 to 31 July 2021</td>
</tr>
<tr>
<td>2.29B</td>
<td>COBS</td>
<td>R</td>
<td>19.5.5R(6)(g) and 19.5.16R</td>
<td>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.</td>
<td>1 April 2020 to 31 July 2021</td>
</tr>
<tr>
<td>2.29C</td>
<td>COBS</td>
<td>R</td>
<td>19.5.5R(7)</td>
<td>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.</td>
<td>1 April 2020 to 31 July 2021</td>
</tr>
<tr>
<td>2.29D</td>
<td>COBS</td>
<td>G</td>
<td>19.5.5R(7)</td>
<td>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.</td>
<td>1 April 2020 to 31 July 2021</td>
</tr>
<tr>
<td>2.29E</td>
<td>COBS</td>
<td>R</td>
<td>19.5.16R(2)</td>
<td>In respect of the year 1 January to 31 December 2020 only, the annual report need not explain how a <em>relevant scheme</em> 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).</td>
<td>1 April 2020 to 31 July 2021</td>
</tr>
<tr>
<td>2.29F</td>
<td>COBS</td>
<td>G</td>
<td>19.5.5R(9) and 19.5.17R</td>
<td>IGCs do not need to ensure that members of <em>relevant schemes</em> 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.</td>
<td>1 April 2020 to 31 December 2021</td>
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<td>Transitional provision dates in force</td>
<td>Hand book provisions: coming into force</td>
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<td>2.30 COBS TP 2.31</td>
<td>G</td>
<td>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 August 2020 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.</td>
<td>From 6 April 2020 to 31 July 2020</td>
<td>6 April 2020</td>
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<td>2.31 COBS 19.5</td>
<td>R</td>
<td>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 August 2020: (1) capped drawdown pension fund; (2) flexi-access drawdown pension fund; (3) manufacture; and (4) pathway investment.</td>
<td>From 6 April 2020 to 31 July 2020</td>
<td>6 April 2020</td>
<td></td>
</tr>
<tr>
<td>2.32 COBS 19.5R(2A)(k)</td>
<td>R</td>
<td>The rule in column (2) does not apply until 1 August 2020 and is replaced by the guidance in COBS TP 2.33.</td>
<td>From 6 April 2020 to 31 July 2020</td>
<td>6 April 2020</td>
<td></td>
</tr>
<tr>
<td>2.33 COBS 19.5R(2A)(k)</td>
<td>G</td>
<td>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.</td>
<td>From 6 April 2020 to 31 July 2020</td>
<td>6 April 2020</td>
<td></td>
</tr>
<tr>
<td>2.34 COBS 19.5R(6)</td>
<td>R</td>
<td>In relation to the matters in COBS 19.5R(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.</td>
<td>From 6 April 2020 to 31 December 2020</td>
<td>6 April 2020</td>
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</tr>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Handbook provisions: dates in force</td>
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</tr>
<tr>
<td>2.35 COBS 19.5.5R(6)(aa) R</td>
<td>The rule in column (2) does not apply until 6 April 2021 and is replaced by the guidance in COBS TP 2.36 below.</td>
<td>From 6 April 2020 to 5 April 2021 6 April 2020</td>
<td></td>
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</tr>
<tr>
<td>2.36 COBS 19.5.5R(6)(aa) G</td>
<td>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).</td>
<td>From 6 April 2020 to 5 April 2021 6 April 2020</td>
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</tr>
</tbody>
</table>
Conduct of Business Sourcebook

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

<table>
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<tr>
<th>Handbook reference</th>
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<th>When record must be made</th>
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<tbody>
<tr>
<td>COBS 2.3.17R (1)</td>
<td>Information disclosed to the client in accordance with COBS 2.3.1R (2)(b)</td>
<td>The information disclosed</td>
<td>When information is disclosed</td>
<td>5 years from date information is given</td>
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<tr>
<td>COBS 2.3.17R (2)</td>
<td>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)</td>
<td>Each benefit given</td>
<td>When benefit is given</td>
<td>5 years from date of benefit</td>
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<td>Handbook reference</td>
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<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
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<tr>
<td>COBS 2.3A.19R (5)(f)(iv)</td>
<td>Trial periods of research received in accordance with COBS 2.3A.19R (5)(f).</td>
<td>Dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in COBS 2.3A.19R(5)(f)(i) to (iii).</td>
<td>When the trial period is received</td>
<td>Not specified</td>
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<tr>
<td>COBS 2.3A.32R</td>
<td>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</td>
<td>(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</td>
<td>When the relevant fee, commission or non-monetary benefit is paid or received</td>
<td>Not specified</td>
</tr>
<tr>
<td>COBS 2.3B.11R</td>
<td>Audit trail in relation to the operation of any research payment accounts</td>
<td>(1) Payments made to research providers; and (2) how the amounts paid were determined</td>
<td>When a payment for research is made</td>
<td>Not specified</td>
</tr>
<tr>
<td>COBS 2.3B.20R</td>
<td>Summary details in relation to the operation of a research payment account</td>
<td>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</td>
<td>From when the research payment account is established</td>
<td>Not specified</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
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<td>COBS 3.8.2 R (1)</td>
<td>Standard form notice to clients and agreements under COBS 3</td>
<td>Each standard form notice and agreement</td>
<td>When standard form is first used</td>
<td>Relevant period from when the firm ceases to carry on business with clients under that standard form (see COBS 3.8.2 R (3))</td>
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<td></td>
<td>Client categorisation</td>
<td>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</td>
<td>From time of categorisation</td>
<td>Relevant period from when the firm ceases to carry on business with or for that client (see COBS 3.8.2 R (3))</td>
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<tr>
<td>COBS 4.11.1R (1)</td>
<td>Financial promotion</td>
<td>A financial promotion communicated or approved (subject to exemptions)</td>
<td>When communicated or approved</td>
<td>See COBS 4.11.1R (3)</td>
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<td>COBS 4.11.1R (2)</td>
<td>Telemarketing scripts</td>
<td>Copy of any script used</td>
<td>Date script used</td>
<td>See COBS 4.11.1R (3)</td>
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<tr>
<td>COBS 4.11.1R (2A)</td>
<td>Non-mainstream pooled investments: certification of compliance</td>
<td>(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,</td>
<td>(1) Date of certification (2) Date the invitation or inducement is communicated or approved</td>
<td></td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
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<tr>
<td>COBS 4.11.2 G</td>
<td>Compliance of financial promotions</td>
<td>Firms encouraged to consider recording why a financial promotion is considered compliant.</td>
<td>Date of assessment of compliance</td>
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<tr>
<td>COBS 6.1A.5AR (2)(e)(vi)(D)</td>
<td>Trial periods of research received in accordance with COBS 6.1A.5AR(2)(e)(vi)</td>
<td>Dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in COBS 6.1A.5AR(2)(e)(vi)(A) to (D)</td>
<td>When the trial period is received</td>
<td></td>
</tr>
<tr>
<td>COBS 6.1A.27 R</td>
<td>Adviser charging and remuneration</td>
<td>(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.</td>
<td>(1) when the charging structure is first used; (2) from the date of disclosure; (3) from the date of disclosure;</td>
<td>See COBS 6.1A.27R (1) to (3)</td>
</tr>
<tr>
<td>COBS 6.1C.21 R</td>
<td>Consultancy charging and remuneration</td>
<td>(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</td>
<td>(1) when the charging structure is first used; (2) from the date of disclosure;</td>
<td>See COBS 6.1C.21R</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
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</tr>
<tr>
<td>COBS 8.1.4 R</td>
<td>Client agreements (non-MiFID provisions)</td>
<td>Documents setting out rights and obligations of the firm and the client</td>
<td>From date of agreement</td>
<td>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</td>
</tr>
<tr>
<td>COBS 8A.1.9R</td>
<td>Client agreements (MiFID provisions)</td>
<td>Documents setting out rights and obligations of the firm and the client</td>
<td>From date of agreement</td>
<td>At least the duration of the relationship with the client</td>
</tr>
<tr>
<td>COBS 9.2.9 R</td>
<td>Recommendations on friendly society life policies</td>
<td>Why the recommendation is considered suitable</td>
<td>Date of recommendation</td>
<td>5 years</td>
</tr>
<tr>
<td>COBS 9.5.1 G</td>
<td>Suitability (non-MiFID provisions)</td>
<td>Client information for suitability report</td>
<td>From date of suitability report</td>
<td>See COBS 9.5.2 R.</td>
</tr>
<tr>
<td>COBS 9.6.19 R</td>
<td>Basic advice</td>
<td>Decision to give basic advice, range used and basic advice summary prepared for retail client</td>
<td>Date on which basic advice given</td>
<td>5 years</td>
</tr>
<tr>
<td>COBS 9.6.20 R</td>
<td>Scope of basic advice (stakeholder products)</td>
<td>Scope of basic advice and its range (or ranges) of stakeholder products</td>
<td>Date on which the scope and range becomes relevant</td>
<td>5 years from the date replaced by more up-to-date record</td>
</tr>
<tr>
<td>COBS 9A.4.1G</td>
<td>Suitability (MiFID provisions)</td>
<td>Client information for suitability report</td>
<td>From date of suitability report</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>COBS 9A.4.3EU</td>
<td>Suitability (insurance-based investment products)</td>
<td>Client information for suitability report</td>
<td>From date of suitability report</td>
<td>For whichever is the longer of 5 years or the duration of the relationship with the client</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
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<tr>
<td>COBS 10.7.1 G</td>
<td>Appropriateness (non-MiFID provisions)</td>
<td>Client information obtained in making assessment of appropriateness and the appropriateness assessment</td>
<td>Date of assessment</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>COBS 10A.7.2EU</td>
<td>Appropriateness (MiFID provisions)</td>
<td>Records of appropriateness assessments including the results of such assessments and any warnings given to clients</td>
<td>Date of assessment</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>COBS 10A.7.2AEU</td>
<td>Appropriateness (insurance-based investment products)</td>
<td>Records of appropriateness assessments including the results of such assessments and any warnings given to clients - details in COBS 10A.7.2A</td>
<td>Date of assessment</td>
<td>For whichever is the longer of 5 years or the duration of the relationship with the client</td>
</tr>
<tr>
<td>COBS 11.5A.4EU</td>
<td>Client orders</td>
<td>Initial orders from clients and decisions to deal</td>
<td>Immediately</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>COBS 11.5A.5EU</td>
<td>Client orders</td>
<td>Transactions and order processing</td>
<td>Immediately</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>COBS 11.7.4 R</td>
<td>Personal account dealing</td>
<td>Notifications by outsourcing provider and authorisation or prohibition.</td>
<td>Date of notification or decision.</td>
<td>5 years</td>
</tr>
<tr>
<td>COBS 11.7A.5EU</td>
<td>Personal account dealing (MiFID provisions)</td>
<td>A record of any personal transaction notified or identified, including any authorisation or prohibition.</td>
<td>Date of notification, identification or decision</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>COBS 11A.1.4BR(3)(c)</td>
<td>The firm's assessment under COBS 11A.1.4BR(3)(a)</td>
<td>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);</td>
<td>5 years</td>
<td></td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
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<tr>
<td>COBS 11A.1.4CR</td>
<td>Restrictions on unconnected analysts</td>
<td>(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.</td>
<td>When the opportunity is communicated to the range of unconnected analysts</td>
<td>5 years</td>
</tr>
<tr>
<td>COBS 11A.1.4ER</td>
<td>Information given by the issuer team during the relevant period under COBS 11A.1.4BR(2)(b)(iv)</td>
<td>(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.</td>
<td>At the end of the relevant period under COBS 11A.1.4BR(2)(b)(iv)</td>
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</tr>
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<td>COBS 11A.1.9EU</td>
<td>Underwriting and placing</td>
<td>Content and timing of instructions received from clients and allocation decisions</td>
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</tr>
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<td>Handbook reference</td>
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<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
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<tr>
<td>COBS 15.3.4 R</td>
<td>Cancellation: exercise of right</td>
<td>Exercise of the right to cancel or withdraw</td>
<td>Date of exercise</td>
<td>As specified in COBS 15.3.4 R(1), (2) and (3)</td>
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<td>COBS 16.2.7 R</td>
<td>Confirmation to clients (non-MiFID provisions)</td>
<td>Copy of a confirmation</td>
<td>From date of despatch to client</td>
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<tr>
<td>COBS 16.3.11 R</td>
<td>Periodic statements (non-MiFID provisions)</td>
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<td>From date of despatch to client</td>
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<tr>
<td>COBS 16A.3.1EU</td>
<td>Confirmation to clients (MiFID provisions)</td>
<td>A copy of a confirmation</td>
<td>From date of despatch to client</td>
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<tr>
<td>COBS 16A.4.1EU</td>
<td>Periodic statements (MiFID provisions)</td>
<td>A copy of a periodic statement sent to a client</td>
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<td>COBS 16A.4.2EU</td>
<td>Periodic statements (insurance-based investment products)</td>
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<tr>
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<tr>
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<tr>
<td>COBS 19.1.7CR</td>
<td>Execution only pension transfer or opt out</td>
<td>That no personal recommendation was given to the client</td>
<td>Date of transaction</td>
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<td>Promotion of personal pension scheme</td>
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<td>Precise terms and conditions on which support assets operate and are available including whether and when they are repayable</td>
<td>When a firm first has support assets outside the with-profits fund</td>
<td>Until the firm ceases to use support assets outside the with-profits fund</td>
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<tr>
<td>COBS 20.2.36A R</td>
<td>strategic investments</td>
<td>A description of the strategic purpose for which a strategic investment has been purchased or retained</td>
<td>Before making a strategic investment or when reviewing whether to retain a strategic investment</td>
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<tr>
<td>COBS 20.3.1 R</td>
<td>PPFMs</td>
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<tr>
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<td>Retail distribution of mutual society shares</td>
<td>Information and evidence demonstrating compliance with the requirements of COBS 22.2</td>
<td>At or near the time of the sale to a retail client</td>
<td>5 years for MiFID or equivalent third country business and 3 years for other business</td>
</tr>
<tr>
<td>COBS 22.3.5 R</td>
<td>Retail distribution of contingent convertible instruments and CoCo funds</td>
<td>Information and evidence demonstrating compliance with the restrictions in COBS 22.3</td>
<td>At or near the time of the sale or communication or approval of a promotion to a retail client</td>
<td>5 years for MiFID or equivalent third country business and 3 years for other business</td>
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<tr>
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<td>Client categorisation transitional</td>
<td>Categorisation or re-categorisation under TP1</td>
<td>Date of categorisation/ re-categorisation</td>
<td>See COBS 3.8.2 R (2)</td>
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<tr>
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<td>Date of decision and date from which election is to be effective</td>
<td>5 years</td>
</tr>
<tr>
<td>COBS TP 2</td>
<td>Specialist regimes</td>
<td>Election to comply with COBS 18 sooner than 1 May 2008</td>
<td>Date of decision and date from which election is to be effective</td>
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</table>
## Conduct of Business Sourcebook

### Schedule 2

#### Notification requirements

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<tr>
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<th>Contents of notification</th>
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<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>COBS 20.2.19AR (1)</td>
<td>Details of a proposed distribution</td>
<td>Written details of the proposed distribution, together with copies of draft notifications it proposes to send to policyholders.</td>
<td>The proposed distribution to policyholders is smaller than the ‘pre-notification to policyholder minimum’ calculated in accordance with COBS 20.2.19BR (1).</td>
<td>At least two months prior to the proposed distribution</td>
</tr>
<tr>
<td>COBS 20.2.19AR (2)</td>
<td>Details of a proposed distribution</td>
<td>Written details of the proposed distribution, together with copies of draft notifications it proposes to send to policyholders.</td>
<td>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).</td>
<td>At least one month prior to the proposed distribution</td>
</tr>
<tr>
<td>COBS 20.2.45 R</td>
<td>Appointment of policyholder advocate.</td>
<td>The terms on which the firm proposes to appoint a policyholder advocate.</td>
<td>Proposal to appoint policyholder advocate.</td>
<td>As soon as reasonably practicable</td>
</tr>
<tr>
<td>COBS 21.2.8 R</td>
<td>Breach of COBS 21.3.5 R</td>
<td>Any failure to meet the requirements of COBS 21.3.5 R</td>
<td>Breach of COBS 21.3.5 R</td>
<td>As soon as the firm becomes aware of the failure</td>
</tr>
<tr>
<td>COBS 20.5.5R (3)</td>
<td>The decision of a firm's governing body to depart from the advice or recommendation of the with-profits committee or advisory arrangement considers that the issue is sufficiently significant.</td>
<td>A description of: (1) the decision of, and reasons given by, the firm's governing body;</td>
<td>The with-profits committee or advisory arrangement considers that the issue is sufficiently significant.</td>
<td>As soon as reasonably practicable</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Matters to be notified</td>
<td>Contents of notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
</tr>
<tr>
<td>--------------------</td>
<td>------------------------</td>
<td>--------------------------</td>
<td>---------------</td>
<td>--------------</td>
</tr>
</tbody>
</table>
|                    | 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. | }
Sch 3.1 G

There are no requirements for fees or other payments in COBS.
Conduct of Business Sourcebook

Schedule 4
Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]
Conduct of Business Sourcebook

Schedule 5
Rights of action for damages

Sch 5.1 G
The table below sets out the rules in COBS contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

Sch 5.2 G
If a "Yes" appears in the column headed "For private person?", the rule may be actionable by a "private person" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the FCA has removed the right of action under section 150(2) of the Act. If so, a reference to the rule in which it is removed is also given.

Sch 5.3 G
The column headed "For other person?" indicates whether the rule may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the rule may be actionable is given.

Sch 5.4 G

<table>
<thead>
<tr>
<th>Chapter/Appendix</th>
<th>Section/Annex</th>
<th>Paragraph</th>
<th>Right of action under section 138D</th>
<th>For private person?</th>
<th>Removed?</th>
<th>For other person?</th>
</tr>
</thead>
<tbody>
<tr>
<td>All rules in COBS with the status letter “E”</td>
<td></td>
<td></td>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Any rule in COBS which prohibits an authorised person from seeking to make provision excluding or restricting any duty or liability</td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Yes Any other person</td>
</tr>
<tr>
<td>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</td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Yes Any other person</td>
</tr>
<tr>
<td>The fair, clear and not misleading rule</td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td>In part (Note 1)</td>
<td>No</td>
</tr>
<tr>
<td>All other rules in COBS</td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
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.
Conduct of Business Sourcebook

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. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FCA to grant a waiver that would be incompatible with the United Kingdom’s responsibilities under those directives.
Schedule 6
Rules that can be waived