

**Conduct of Business Sourcebook**

# Chapter 1

# Application

## 1.1 General application

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

1.1.1

**R**

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

- (1) [deleted]
- (2) *designated investment business*;
- (3) *long-term insurance business in relation to life policies*;

and activities connected with them.

### Deposits (including structured deposits)

1.1.1A

**R**

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

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

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

**Structured deposits: further provisions**

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

- (1) *investment services* and *designated investment business* include selling, or advising *clients* in relation to, *structured deposits*; and
- (2) *financial instruments* and *designated investments* include *structured deposits*.

**1.1.1AB** **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:'.

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

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

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

### Electronic money

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

### 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.

(1)	(2)
"ancillary services"	<i>ancillary service</i>

"client" and "potential client"	<i>client</i>
"competent authority"	<i>FCA</i>
"conditions specified in Article 3(2)"	<i>website conditions</i>
"derivative"	as defined in article 4(1)(49) of <i>MiFID</i>
"Directive 2009/65/EC"	<i>UCITS Directive</i>
"Directive 2014/65/EU"	<i>MiFID</i>
"distributing units in collective investment undertakings"	distributing units in a <i>UCITS</i>
"durable medium"	<i>durable medium</i>
"eligible counterparty"	<i>eligible counterparty</i>
"financial analyst"	<i>financial analyst</i>
"financial instrument"	<i>financial instrument</i> and (if the context requires) <i>designated investment</i> and <i>structured deposit</i>
"funds"	<i>client money</i> that a <i>firm</i> receives or holds for, or on behalf of, a <i>client</i> in the course of, or in connection with, its <i>MiFID business</i> and (if the context requires) its <i>equivalent business of a third country investment firm</i> .
"group"	as defined in article 4(1)(34) of <i>MiFID</i>
"investments"	<i>financial instrument</i> and (if the context requires) <i>designated investment</i> and <i>structured deposit</i>
"investment advice"	<i>personal recommendation</i>
"investment firm" and "firm"	<i>firm</i>
"investment research"	<i>investment research</i>
"investment service" and "investment services and activities"	<i>investment service</i> and <i>investment services and/or activities</i> or (if the context requires) <i>designated investment business</i>
"market maker"	<i>market maker</i>
"periodic statement"	<i>periodic statement</i>
"PRIIPs KID"	<i>key information document</i>
"portfolio management" and "portfolio management service"	<i>portfolio management</i>
"professional client"	<i>professional client</i>
"professional client covered by Section 1 of Annex II to Directive 2014/65/EU"	<i>per se professional client</i>
"professional client in accordance with Section 2 of Annex II to Directive 2014/65/EU"	<i>elective professional client</i>
"Regulation (EU) No. 1286/2014"	<i>PRIIPs Regulation</i>
"relevant person"	<i>relevant person</i>
"retail client"	<i>retail client</i>

"shall"	must
"tied agent"	<i>tied agent</i>
"UCITS KIID"	<i>key investor information document</i>

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

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

### Interpretation – "in good time"

- 1.2.5 **G**
- (1) Certain of the provisions in this sourcebook which 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](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](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](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.

(1)	(2)
"advice"	<i>personal recommendation</i>
"article 20(1) of Directive (EU) 2016/97"	COBS 9A.2.3AR or COBS 7.3.4R
"article 30(1) of Directive (EU) 2016/97"	COBS 9A.2.1R and COBS 9A.2.16R

(1)	(2)
"article 30(2) of Directive (EU) 2016/97"	COBS 10A.2.1R and COBS 10A.2.2R
"article 30(3)(a) (ii) of Directive (EU) 2016/97"	COBS 10A.4.1R(2A)
"article 14(1) of this Regulation"	COBS 9A.3.3AEU
"article 185 of Directive 2009/138/EC"	relevant <i>rules</i> in COBS 13, COBS 14 and COBS 16.6 which are followed by a "Note:" referring to article 185 of Solvency II
"competent authority"	FCA
"customer" and "potential customer"	Client
"Directive (EU) 2016/97"	IDD
"durable medium"	durable medium
"financial instrument"	financial instrument and (if the context requires) designated investment and structured deposit
"insurance-based investment product"	insurance-based investment product
"insurance distribution"	insurance distribution activities
"insurance intermediary" and "intermediary"	insurance intermediary
"insurance product"	life policy
"insurance undertaking" and "undertaking"	Insurer
"shall"	Must

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

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

**Interpretation – "in good time"**

1.3.5 **G**

- (1) Certain provisions in this sourcebook which 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

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*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

<b>1.</b>	<b>Eligible counterparty business</b>																													
1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> except, where the <i>eligible counterparty business</i> is in scope of the <i>IDD</i> , those provisions which implement the <i>IDD</i> continue to apply.																												
		<table border="1"> <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 4.4.1R, 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>	COBS provision	Description	COBS 2 (other than COBS 2.1.1AR, COBS 2.2A and COBS 2.4)	Conduct of business obligations	COBS 4 (other than COBS 4.2, COBS 4.4.1R, COBS 4.5A.9EU and COBS 4.7.-1AEU)	Communicating with clients including financial promotions	COBS 6.1	Information about the firm, its services and remuneration (non-MiFID and non insurance distribution provisions)	COBS 6.1ZA.16R	Information about costs and charges of different services or products (MiFID provisions)	COBS 6.1ZA.22R	Compensation information (MiFID provisions)	COBS 8	Client agreements (non-MiFID provisions)	COBS 8A (other than COBS 8A.1.5EU to COBS 8A.1.8G)	Client agreements (MiFID provisions)	COBS 10	Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)	COBS 10A	Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)	COBS 11.2A, COBS 11.2B and COBS 11.3	Best execution, quality of execution and client order handling	COBS 12.2.18EU	Labelling of non-independent research	COBS 14.3	Information about designated investments (non-MiFID provisions)	COBS 16	Reporting information to clients (non-MiFID provisions)
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		[Note: paragraphs 1 and 2 of article 30(1) of <i>MiFID</i> ]																												
<b>2.</b>	<b>Transactions between an MTF operator and its users</b>																													

2.1	R	The <i>COBS</i> provisions (applicable to <i>MiFID business</i> ) shown below do not apply to a transaction between an operator of an <i>MTF</i> and a member or participant in relation to the use of the <i>MTF</i> .																		
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		[Note: article 19(4) of <i>MiFID</i> ]																		
3.		<b>Transactions concluded on an MTF</b>																		
3.1	R	The <i>COBS</i> provisions in paragraph 2.1R do not apply to transactions concluded under the rules governing an <i>MTF</i> between members or participants of the <i>MTF</i> . However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on an <i>MTF</i> .																		
		[Note: article 19(4) of <i>MiFID</i> ]																		
3A.		<b>Operators of OTFs</b>																		
3A.1	G	A <i>firm</i> 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.		<b>Transactions concluded on a regulated market</b>																		
4.1	R	In relation to transactions concluded on a <i>regulated market</i> , members and participants of the <i>regulated market</i> are not required to apply to each other the <i>COBS</i> provisions in paragraph 2.1R. However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on a <i>regulated market</i> .																		
		[Note: article 53(4) of <i>MiFID</i> ]																		
5.		<b>Consumer credit products</b>																		
5.1	R	If a <i>firm</i> , in relation to its <i>MiFID business</i> , offers an <i>investment service</i> as part of a financial product that is subject to other provisions of <i>EU law</i> related to <i>credit institutions</i> and consumer credits with respect to information requirements, that service is not subject to the <i>rules</i> in this sourcebook that implement articles 24(3), (4) and (5) of <i>MiFID</i> .																		
		[Note: article 24(6) of <i>MiFID</i> ]																		
5.2	G	This exclusion for consumer credit products is intended to apply on a narrow basis in relation to cases in which the <i>investment service</i> is a part of another financial product. It does not apply where the <i>investment service</i> is the essential or leading part of the financial product. It also does not apply where the service provided is a combination of an <i>investment service</i> and an <i>ancillary service</i> (for example, granting a credit for the execution of an order where the credit is instrumental to the buying or the selling of a <i>financial instrument</i> .) The exclusion also does not apply in relation to the sale of a <i>financial instrument</i> 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*]
- 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.

### 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 *IDD's* 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 Directive'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 not 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 4(1) and 16 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)

- 7.4 G 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.
- 7.5 G 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*)
- 8. Investor Compensation Directive**
- 8.1 G
- (1) 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).
  - (2) 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.
- 9. UCITS Directive: effect on territorial scope**
- 9.1 G The *UCITS Directive* covers undertakings for collective investment in transferable securities (*UCITS*) meeting the requirements of the Directive, and their *management companies* and *depositories*. 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).
- 9.1A G 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*).
- 9.1B G 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*]

