Conduct of Business Sourcebook

Chapter 1
Application



Markets in Financial Instruments 1.2 Directive

References in COBS to the MiFID Org Regulation

- G 1.2.1
- (1) This sourcebook contains a number of provisions which transposed MiFID. A rule transposed a provision of MiFID if it is followed by a 'Note:' indicating the article of MiFID or the MiFID Delegated Directive which it transposed.
- (2) In order to help *firms* which are subject to those requirements which implemented MiFID to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the MiFID Org Regulation, marked with the status letters "UK".
- (3) This sourcebook does not reproduce the MiFID Org Regulation in its entirety. A firm to which provisions of the MiFID Org Regulation applies should refer to Commission Delegated Regulation (EU) 2017/ 565 as published in the electronic version of the Official Journal of the European Union and as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.
- G 1.2.2
- (1) In some cases, this sourcebook applies provisions of the MiFID Org Regulation to firms in relation to business other than their MiFID business as if those provisions were rules.
- (2) Third country investment firms should also have regard to the rule in ■ GEN 2.2.22AR which concerns the application of the MiFID Org Regulation to such firms.
- 1.2.3 R
- (1) Where this sourcebook, or the rule in GEN 2.2.22AR, applies provisions of the MiFID Org Regulation as if they were rules, (2) applies to enable firms to correctly interpret and understand the application of those provisions.
- (2) In this sourcebook, a word or phrase found in a provision marked "UK" and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

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

COBS 1/2

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"retail client" retail client	"relevant person"	relevant person
	"retail client"	retail client
"shall" must	"shall"	must

1.2.5

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

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

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

Interpretation – "in good time"

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

- (2) In determining what constitutes the provision of information "in good time", a firm should take into account, having regard to the urgency of the situation, the *client's* need for sufficient time to read and understand the information before taking an investment decision.
- (3) A *client* is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a client has no experience with, than a client considering a simpler or more familiar product or service, or where the *client* has relevant prior experience.

[Note: recital 83 of MiFID]

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

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

guidelines on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN); and guidelines on complex debt instruments and structured deposits, 4 February 2016/ESMA/2015/1787 (EN)].

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