

Conduct of Business Sourcebook

Chapter 1

Application

1.2 Markets in Financial Instruments Directive

References in COBS to the MiFID Org Regulation

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

(1)	(2)
"ancillary services"	<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"	those <i>financial instruments</i> referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the <i>Regulated Activities Order</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 section 421 of the <i>Act</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 Part 2 of Schedule 1 to Regulation (EU) No 600/2014"	<i>per se professional client</i>
"professional client in accordance with Part 3 of Schedule 1 to Regulation (EU) No 600/2014"	<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"

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

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

Interpretation – "in good time"

1.2.5

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

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

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

[Note: recital 83 of *MiFID*]

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

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

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

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