

Chapter 11

Dealing and managing

11.1 Application

General application

11.1.1 **R** This chapter applies to a firm.

(1) [deleted]

(2) [deleted]

11.1.2 **R** In this chapter, provisions marked "EU" apply to a *firm* which is not a *MiFID investment firm* as if they were *rules*.

Application to section on the use of dealing commission

11.1.3 **R** The section on the use of dealing commission applies to a *firm* that acts as an *investment manager*.

Application of section on personal account dealing

11.1.4 **R** The section on personal account dealing applies to the *designated investment business* of a *firm* in relation to activities carried on from an *establishment* in the *United Kingdom*.

11.1.5 **G** The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see **COBS 11.7**) 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 **R** The section on best execution (**COBS 11.2**) does not apply to a *firm* when:

(1) executing orders: or

(2) placing orders with other entities for execution: or

(3) transmitting orders to other entities for execution;

in relation to a *spread-bet* which is not a *financial instrument*, where the *firm* has not made a *personal recommendation* in relation to that *spread-bet*.

Disapplication of best execution to CIS operators purchasing or selling own units

11.1.7

R

The section on best execution (■ COBS 11.2) 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

Obligation to execute orders on terms most favourable to the client

- 11.2.1** **R** A *firm* must take all reasonable steps to obtain, when executing orders, the best possible result for its *clients* taking into account the *execution factors*.
- [**Note:** article 21(1) of *MiFID* and article 25(2) first sentence of the *UCITS implementing Directive*]
- [**Note:** The Committee of European Securities Regulators (CESR) has issued a Question and Answer paper on best execution under *MiFID*. This paper also incorporates the European Commission's response to CESR's questions regarding the scope of the best execution obligations under *MiFID*. The paper can be found at: http://www.esma.europa.eu/system/files/07_320.pdf]

Execution of decisions by UCITS management companies to deal on behalf of the schemes they manage

- 11.2.1A** **R** A *management company* must, in relation to each *UCITS scheme* or *EEA UCITS scheme* it manages, act in the best interests of the *scheme* when *executing* decisions to deal on its behalf in the context of the management of its portfolio, and **■ COBS 11.2.1 R** applies in relation to all such decisions.
- [**Note:** article 25(1) of the *UCITS implementing Directive*]

Application of best execution obligation

- 11.2.2** **G** The obligation to take all reasonable steps to obtain the best possible result for its *clients* (see **■ COBS 11.2.1 R**) should apply to a *firm* which owes contractual or agency obligations to the *client*.
- [**Note:** recital 33 to *MiFID*]
- 11.2.3** **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 of recital 69 to the *MiFID implementing Directive*]
- 11.2.4** **G** If a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all reasonable steps to obtain the best possible result for its *clients* if the *firm* executed that quote at the time the quote was provided, the *firm* will meet those same obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing

market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

[Note: second sentence of recital 69 to the *MiFID implementing Directive*]

- 11.2.5 **G** The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures or the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of *financial instruments*. For example, transactions involving a customised OTC *financial instrument* that involve a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving shares traded on centralised *execution venues*.

[Note: recital 70 to the *MiFID implementing Directive*]

Management companies: execution and transmission of orders

- 11.2.5A **G**
- (1) A *management company* should, for each *UCITS scheme* or *EEA UCITS scheme* it manages, act in the best interests of the *scheme* when directly executing orders to deal on its behalf or when transmitting those orders to third parties.
 - (2) When executing orders on behalf of any such *scheme* it manages, a *management company* is expected to take all reasonable steps to obtain the best possible result for the *scheme* on a consistent basis, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order.

[Note: recital (19) to the *UCITS implementing Directive*]

Best execution criteria

- 11.2.6 **R** When executing a *client* order, a *firm* must take into account the following criteria for determining the relative importance of the *execution factors*:
- (1) the characteristics of the *client* including the categorisation of the *client* as retail or professional;
 - (2) the characteristics of the *client* order;
 - (3) the characteristics of *financial instruments* that are the subject of that order;
 - (4) the characteristics of the *execution venues* to which that order can be directed; and
 - (5) for a *management company*, the objectives, investment policy and risks specific to the *UCITS scheme* or *EEA UCITS scheme*, as indicated in its *prospectus* or *instrument constituting the fund*.

[Note: article 44(1) of the *MiFID implementing Directive* and article 25(2) second sentence of the *UCITS implementing Directive*]

Role of price

- 11.2.7 **R** Where a *firm* executes an order on behalf of a *retail client*, the best possible result must be determined in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution, which must include all expenses incurred by the *client* which are directly related to the execution of the order, including *execution venue* fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

[Note: paragraph 1 of article 44(3) of the *MiFID implementing Directive*]

- 11.2.8 **G** For the purposes of ensuring that a *firm* obtains the best possible result for the *client* when executing a *retail client* order in the absence of specific *client* instructions, the *firm* should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution. Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.

[Note: recital 67 to the *MiFID implementing Directive*]

- 11.2.9 **G** A *firm's* execution policy should determine the relative importance of each of the *execution factors* or establish a process by which the *firm* will determine the relative importance of the *execution factors*. The relative importance that the *firm* gives to those *execution factors* must be designed to obtain the best possible result for the execution of its *client* orders. Ordinarily, the *FCA* would expect that price will merit a high relative importance in obtaining the best possible result for *professional clients*. However, in some circumstances for some *clients*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible execution result.

Delivering best execution where there are competing execution venues

- 11.2.10 **R** For the purposes of delivering best execution for a *retail client* where there is more than one competing venue to execute an order for a *financial instrument*, in order to assess and compare the results for the *client* that would be achieved by executing the order on each of the *execution venues* listed in the *firm's* order execution policy that is capable of executing that order, the *firm's* own commissions and costs for executing the order on each of the eligible *execution venues* must be taken into account in that assessment.

[Note: article 44(3) of paragraph 2 of the *MiFID implementing Directive*]

11.2.11 **G** The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a *firm* to compare the differences in its own commissions which are attributable to differences in the nature of the services that the *firm* provides to *clients*.

[Note: recital 71 to the *MiFID implementing Directive*]

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

[Note: article 44(4) of the *MiFID implementing Directive*]

11.2.13 **G** A *firm* would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charges a different commission or spread to *clients* for execution on different *execution venues* and that difference does not reflect actual differences in the cost to the *firm* of executing on those venues.

[Note: recital 73 to the *MiFID implementing Directive*]

Requirement for order execution arrangements including an order execution policy

11.2.14 **R** A *firm* must establish and implement effective arrangements for complying with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, for its *client* orders, the best possible result in accordance with that obligation.

[Note: article 21(2) of *MiFID* and article 25(3) first paragraph of the *UCITS implementing Directive*]

11.2.15 **R** The order execution policy must include, in respect of each class of *financial instruments*, information on the different *execution venues* where the *firm* executes its *client* orders and the factors affecting the choice of *execution venue*. It must at least include those *execution venues* that enable the *firm* to obtain on a consistent basis the best possible result for the execution of *client* orders.

[Note: paragraph 1 of article 21(3) of *MiFID*]

11.2.16 **G** (1) When establishing its execution policy, a *firm* should determine the relative importance of the *execution factors*, or at least establish the process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its *clients*.

(2) In order to give effect to that policy, a *firm* should select the *execution venues* that enable it to obtain on a consistent basis the best possible result for the execution of *client* orders.

- (3) A *firm* should apply its execution policy to each *client* order that it executes with a view to obtaining the best possible result for the *client* in accordance with that policy.
- (4) The obligation to take all reasonable steps to obtain the best possible result for the *client* should not be treated as requiring a *firm* to include in its execution policy all available *execution venues*.

[Note: recital 66 to the *MiFID implementing Directive*]

- 11.2.17 **G** The provisions of this section which provide that costs of execution include a *firm's* own commissions or fees charged to the *client* for the provision of an *investment service* should not apply for the purpose of determining what *execution venues* must be included in the *firm's* execution policy.

[Note: recital 72 to the *MiFID implementing Directive*]

- 11.2.18 **G** The provisions of this section as to execution policy are without prejudice to the general obligation of a *firm* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

[Note: recital 74 to the *MiFID implementing Directive*]

Following specific instructions from a client

- 11.2.19 **R** (1) Whenever there is a specific instruction from the *client*, the *firm* must execute the order following the specific instruction.

[Note: article 21(1) of *MiFID*]

- (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.

[Note: article 44(2) of the *MiFID implementing Directive*]

- 11.2.20 **G** When a *firm* executes an order following specific instructions from the *client*, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the *client* instructions relate. The fact that the *client* has given specific instructions which cover one part or aspect of the order should not be treated as releasing the *firm* from its best execution obligations in respect of any other parts or aspects of the *client* order that are not covered by such instructions.

[Note: recital 68 to the *MiFID implementing Directive*]

- 11.2.21 **G** A *firm* should not induce a *client* to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the *client*, when the *firm* ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that *client*. However, this should not prevent a *firm* inviting a *client* to choose between two or more specified trading venues,

provided that those venues are consistent with the execution policy of the *firm*.

[Note: recital 68 to the *MiFID implementing Directive*]

Information about the order execution policy

11.2.22 **R** A *firm* must provide appropriate information to its *clients* on its order execution policy.

[Note: paragraph 2 of article 21(3) of *MiFID*]

11.2.23 **R**

- (1) A *firm* must provide a *retail client* with the following details on its execution policy in good time prior to the provision of the service:
 - (a) an account of the relative importance the *firm* assigns, in accordance with the *execution criteria*, to the *execution factors*, or the process by which the *firm* determines the relative importance of those factors;
 - (b) a list of the *execution venues* on which the *firm* places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of *client* orders;
 - (c) a clear and prominent warning that any specific instructions from a *client* may prevent the *firm* from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.
- (2) This information must be provided in a *durable medium*, or by means of a website (where that does not constitute a *durable medium*) provided that the *website conditions* are satisfied.

[Note: article 46(2) of the *MiFID implementing Directive*]

11.2.23A **R** A *management company* must make available appropriate information on its execution policy and on any material changes to that policy to the *Unitholders* of each *scheme* it manages.

[Note: article 25(3) second part of the second paragraph of the *UCITS implementing Directive*]

11.2.24 **R** Where the order execution policy provides for the possibility that *client* orders may be executed outside a *regulated market* or an *MTF*, the *firm* must, in particular, inform its *clients* about this possibility.

[Note: paragraph 3 of article 21(3) of *MiFID*]

Client consent to execution policy and execution of orders outside a regulated market or MTF

11.2.25 **R**

- (1) A *firm* (other than a *management company* providing *collective portfolio management services* for a *UCITS scheme* or an *EEA UCITS scheme*) must obtain the prior consent of its *clients* to the execution policy.

(2) In the case of a *management company* providing *collective portfolio management services* for an *ICVC* that is a *UCITS scheme*, or for an *EEA UCITS scheme* that is structured as an investment company, the *management company* must obtain the prior consent of the *ICVC* or investment company to the execution policy.

(3) In the case of a *management company* that is the *ACD* of an *ICVC* that is a *UCITS scheme*, (2) does not apply where the *ACD* is the sole *director* of the *ICVC*.

[**Note:** paragraph 2 of article 21(3) of *MiFID* and article 25(3) first part of the second paragraph of the *UCITS implementing Directive*]

11.2.26 **R** A *firm* must obtain the prior express consent of its *clients* before proceeding to execute their orders outside a *regulated market* or an *MTF*. The *firm* may obtain this consent either in the form of a general agreement or in respect of individual transactions.

[**Note:** paragraph 3 of article 21(3) of *MiFID*]

Monitoring the effectiveness of execution arrangements and policy

11.2.27 **R** A *firm* must monitor the effectiveness of its order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements. The *firm* must notify *clients* of any material changes to their order execution arrangements or execution policy.

[**Note:** article 21(4) of *MiFID* and article 25(4) first paragraph of the *UCITS implementing Directive*]

Review of the order execution policy

11.2.28 **R** (1) A *firm* must review annually its execution policy, as well as its order execution arrangements.

(2) This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for the execution of its *client* orders on a consistent basis using the venues included in its execution policy.

[**Note:** article 46(1) of the *MiFID implementing Directive* and article 25(4) second paragraph of the *UCITS implementing Directive*]

Demonstration of execution of orders in accordance with execution policy

11.2.29 **R** (1) A *firm* other than a *management company* 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 *management company* must be able to demonstrate that it has executed orders on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages in accordance with its execution policy.

[Note: article 21(5) of *MiFID* and article 25(5) of the *UCITS implementing Directive*]

Duty of portfolio managers, receivers and transmitters and management companies to act in clients' best interests

- 11.2.30 **R** A *firm* must, when providing the service of *portfolio management* or, for a *management company*, *collective 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*.

[Note: article 45(1) of *MiFID implementing Directive* and article 26(1) of the *UCITS implementing Directive*]

- 11.2.31 **R** A *firm* must, when providing the service of reception and transmission of orders, comply with the obligation to act in accordance with the best interests of its *clients* when transmitting *client* orders to other entities for execution.

[Note: article 45(2) of the *MiFID implementing Directive*]

- 11.2.32 **R** In order to comply with the obligation to act in accordance with the best interests of its *clients* when it places an order with, or transmits an order to, another entity for execution, a *firm* must:

[Note: article 45(3) of the *MiFID implementing Directive* and article 26(1) of the *UCITS implementing Directive*]

- (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;

[Note: paragraph 1 and 2 of article 45(4) of the *MiFID implementing Directive* and article 26(2) first paragraph of the *UCITS implementing Directive*]

- (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 or, for a *management company*,

must only enter into arrangements for execution where those arrangements are consistent with the requirements of this section, when it places an order with, or transmits an order to, that entity for execution;

[**Note:** paragraph 1 of article 45(5) of the *MiFID implementing Directive* and article 26(2) second paragraph of the *UCITS implementing Directive*]

- (3) provide appropriate information to its *clients* on the policy established in accordance with ■ COBS 11.2.32R (2) or, for a *management company*, make available to *Unitholders* appropriate information on that policy and on any material changes to it;

[**Note:** paragraph 2 of article 45(5) of the *MiFID implementing Directive* and article 26(2) second paragraph last sentence of the *UCITS implementing Directive*]

- (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

[**Note:** first paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) first paragraph of the *UCITS implementing Directive*]

- (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*.

[**Note:** second paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) second paragraph of the *UCITS implementing Directive*]

11.2.32A **R**

A *management company* must be able to demonstrate that it has placed orders on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages in accordance with the policy referred to in ■ COBS 11.2.32 R (2).

[**Note:** article 26(4) of the *UCITS implementing Directive*]

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.

[**Note:** recital 75 to the *MiFID implementing Directive*]

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).

[**Note:** article 45(7) of the *MiFID implementing Directive* and article 25 of the *UCITS implementing Directive*]

11.3 Client order handling

General principles

11.3.1

R

- (1) A *firm* (other than a *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 22(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 22(1) of *MiFID*]

- (3) A *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*]

11.3.2

R

A *firm* must satisfy the following conditions when carrying out *client* orders:

- (1) it must ensure that orders executed on behalf of *clients* are promptly and accurately recorded and allocated;
- (2) it must carry out otherwise comparable 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; and
- (3) it must inform a *retail client* about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

[Note: article 47(1) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 27(1) second paragraph of the *UCITS implementing Directive*]

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 78 to the *MiFID implementing Directive*]

11.3.4 **R** Where a *firm* is responsible for overseeing or arranging the settlement of an executed order or 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 *client*.

[Note: article 47(2) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 27(1) third paragraph of the *UCITS implementing Directive*]

11.3.5 **R** A *firm* must 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*.

[Note: article 47(3) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 27(2) of the *UCITS implementing Directive*]

11.3.6 **G** Without prejudice to the *Market Abuse Regulation*, for the purposes of the *rule* on the misuse of information (see **■** COBS 11.3.5 R), 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 78 to the *MiFID implementing Directive*]

Aggregation and allocation of orders

11.3.7 **R** A *firm* is not permitted to carry out a *client* order or a transaction for own account in aggregation with another *client* order unless the following conditions are met:

- (1) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any *client* whose order is to be aggregated;
- (2) it must be 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;
- (3) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms 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.

[Note: article 48(1) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 28(1) of the *UCITS implementing Directive*]

11.3.8 **R** If a *firm* aggregates a *client* order with one or more other orders and the aggregated order is partially executed, it must allocate the related trades in accordance with its order allocation policy.

[Note: article 48(2) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 28(2) of the *UCITS implementing Directive*]

Aggregation and allocation of transactions for own account

11.3.9 **R** A *firm* which has aggregated transactions for own account with one or more *client* orders must not allocate the related trades in a way which is detrimental to a *client*.

[Note: article 49(1) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 28(3) of the *UCITS implementing Directive*]

11.3.10 **R** (1) If a *firm* aggregates a *client* order with a transaction for own account and the aggregated order is partially executed, it must allocate the related trades to the *client* in priority to the *firm*.

(2) However, if the *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.

[Note: article 49(2) of the *MiFID implementing Directive*, article 19(1) of *MiFID* and article 28(4) of the *UCITS implementing Directive*]

11.3.11 **R** A *firm* must, as part of its order allocation policy, put in place procedures 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.

[Note: article 49(3) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

11.3.12 **G** For the purposes of the provisions of this section, the reallocation of transactions should be considered as detrimental to a *client* if, as an effect of that reallocation, unfair precedence is given to the *firm* or to any particular person.

[Note: recital

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to the

MiFID implementing Directive]

11.3.13 **G** In this section, carrying out *client* orders includes:

(1) the execution of orders on behalf of clients;

-
- (2) the placing of orders with other entities for execution that result from decisions to deal in *financial instruments* on behalf of *clients* when providing the service of *portfolio management* or *collective portfolio management*;
 - (3) the transmission of *client* orders to other entities for execution when providing the service of reception and transmission of orders.

11.4 Client limit orders

Obligation to make unexecuted client limit orders public

- 11.4.1 **R** Unless a *client* expressly instructs otherwise, a *firm* must, in the case of a *client limit order* in respect of shares admitted to trading on a *regulated market* 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 22(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 42 to *MiFID*]

How client limit orders may be made public

- 11.4.3 **EU** An *investment firm* shall be considered to disclose *client limit orders* that are not immediately executable if it transmits the order to a *regulated market* or *MTF* that operates an order book trading system, or ensures that the order is made public and can be easily executed as soon as market conditions allow.

[Note: article 31 of *MiFID Regulation*]

- 11.4.4 **G** ■ MAR 5.8.2 EU sets out the conditions required for an arrangement to make *client limit orders* public under this section. ■ MAR 5.8.3 G and ■ MAR 5.8.4 G provide guidance on these conditions.

Orders that are large in scale

- 11.4.5 **R** The obligation to make public a *limit order* will not apply to a *limit order* that is large in scale compared with normal market size.

[Note: article 22(2) of *MiFID*]

- 11.4.6 **G** ■ MAR 5.7.10 EU and ■ MAR 5.7.11 EU set out when an order shall be considered large in scale compared with normal market size.

11.5 Record keeping: client orders and transactions

Record keeping of client orders and decisions to deal

11.5.1

EU

An *investment firm* shall, in relation to every order received from a *client*, and in relation to every decision to deal taken in providing the service of *portfolio management*, immediately make a record of the following details, to the extent they are applicable to the order or decision to deal in question:

- (1) the name or other designation of the *client*;
- (2) the name or other designation of any relevant person acting on behalf of the *client*;
- (3) the details specified in point 4, 6, and in points 16 to 19, of Table 1 of Annex I;
- (4) the nature of the order if other than buy or sell;
- (5) the type of the order;
- (6) any other details, conditions and particular instructions from the *client* that specify how the order must be carried out;
- (7) the date and exact time of the receipt of the order, or of the decision to deal, by the *investment firm*.

[Note: article 7 of MiFID Regulation]

Record-keeping of transactions

11.5.2

EU

Immediately after executing a *client* order, or, in the case of *investment firms* that transmit orders to another person for execution, immediately after receiving confirmation that an order has been executed, *investment firms* shall record the following details of the transaction in question:

- (1) the name or other designation of the *client*;
- (2) the details specified in points 2, 3, 4, 6, and in points 16 to 21, of Table 1 of Annex I;
- (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;

- (5) the natural person who executed the transaction or who is responsible for the execution.

[Note: article 8(1) of MiFID Regulation]

11.5.3 EU

If an investment firm transmits an order to another person for execution, the investment firm shall 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;
- (4) the date and exact time of transmission.

[Note: article 8(2) of MiFID Regulation]

11.5.4 EU

Points 2, 3, 4, 6, 16 - 21 of Table 1 of Annex 1 of the MiFID Regulation

2.	Trading day	The trading day on which the transaction was executed.
3.	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.
4.	Buy/sell indicator	Identifies whether the transaction was a buy or sell from the perspective of the reporting investment firm or, in the case of a report to a client, of the client.
6.	Instrument identification	This shall consist of: <ul style="list-style-type: none"> - 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; - if the financial instrument in question does not have a unique iden-

16.	Unit price	<p>tification code, the report must include the name of the instrument or, in the case of a derivative contract, the characteristics of the contract.</p> <p>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.</p>
17.	Price notation	<p>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 shall be included.</p>
18.	Quantity	<p>The number of units of the <i>financial instruments</i>, the nominal value of bonds, or the number of derivative contracts included in the transaction.</p>
19.	Quantity notation	<p>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.</p>
20.	Counterparty	<p>Identification of the counterparty to the transaction. That identification shall consist of:</p> <ul style="list-style-type: none"> - where the counterparty is an <i>investment firm</i>, a unique code for that firm, to be determined by the competent authority (if any) to which the report is made; - where the counterparty is a <i>regulated market</i> or <i>MTF</i> or an entity acting as its central counterparty, the unique harmonised identification code for that market, <i>MTF</i> or entity acting as central counterparty, as speci

21.	Venue identification	fied in the list published by the competent authority of the home Member State of that entity in accordance with Article 13(2); - where the counterparty is not an <i>investment firm</i> , a <i>regulated market</i> , an <i>MTF</i> or an entity acting as central counterparty, it should be identified as 'customer/client' of the <i>investment firm</i> which executed the transaction. Identification of the venue where the transaction was executed. That identification shall consist in: - where the venue is a trading venue: its unique harmonised identification code; - otherwise: the code 'OTC'.
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11.6 Use of dealing commission

- 11.6.1** **G** This section deals with the acceptance of certain inducements by *investment managers* and builds upon the *rule* on inducements (■ COBS 2.3.1 R). *Investment managers* should ensure they comply with both this section and the *rule* on inducements.

Application

- 11.6.2** **R** This section applies to a *firm* that acts as an *investment manager* when it *executes customer orders* that relate to:

- (1) *shares*; and
- (2) (a) *warrants*;
 (b) *certificates representing certain securities*;
 (c) *options*; and
 (d) *rights to or interests in investments* of the nature referred to in (a) to (c);
- (3) to the extent that they relate to *shares*.

- 11.6.2A** **G** ■ COBS 11.6.3 R applies to a *full-scope UK AIFM* that is an *internally managed AIF* in accordance with the modification in ■ COBS 18.5.4C R.

Use of dealing commission to purchase goods or services

- 11.6.3** **R**
- (1) Subject to (3), an *investment manager* must not accept any good or service in addition to the *execution* of its *customer orders* if it:
 - (a) *executes its customer orders* through a broker or another *person*;
 - (b) passes on the broker's or other *person's charges* to its *customers*; and
 - (c) is offered that good or service in return for the *charges* referred to in (b).
 - (2) [deleted]
 - (3) The prohibition under (1) does not apply where:
 - (a) the *investment manager* has reasonable grounds to be satisfied that the good or service received in return for the *charges* in

11.6.4

E

- (1)(b) will reasonably assist the *investment manager* in the provision of its services to its *customers*, on whose behalf the relevant *customer orders* are being *executed*;
- (b) the *investment manager's* receipt of that good or service in return for the *charges* in (1)(b) does not, and is not likely to, impair compliance with the duty of the *investment manager* to act in the best interests of its *customers*; and
- (c) that good or service either:
- (i) is directly related to the *execution* of trades on behalf of the *investment manager's customers*; or
 - (ii) amounts to the provision of substantive research.
- (1) Under ■ COBS 11.6.3R (3)(c)(i), for a good or service to be directly related to the *execution* of trades on behalf of the *investment manager's customers* it must be:
- (a) linked to the arranging and conclusion of a specific investment transaction (or series of related transactions); and
 - (b) provided between the point at which the *investment manager* makes an investment or trading decision and the point at which the investment transaction (or series of related transactions) is concluded.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with ■ COBS 11.6.3R (3)(c)(i)
- (3) Contravention of (1) may be relied on as tending to establish a contravention of ■ COBS 11.6.3R (3)(c)(i).

11.6.5

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- (1) Under ■ COBS 11.6.3R (3)(c)(ii), for a good or service to amount to the provision of substantive research the relevant research must:
- (a) be capable of adding value to the investment or trading decisions by providing new insights that inform the *investment manager* when making such decisions about its *customers' portfolios*;
 - (b) whatever form its output takes, represent original thought, in the critical and careful consideration and assessment of new and existing facts, and must not merely repeat or repackage what has been presented before;
 - (c) have intellectual rigour and must not merely state what is commonplace or self-evident; and
 - (d) present the *investment manager* with meaningful conclusions based on analysis or manipulation of data.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with ■ COBS 11.6.3R (3)(c)(ii).
- (3) Contravention of (1) may be relied on as tending to establish a contravention of ■ COBS 11.6.3R (3)(c)(ii).

11.6.6

G

An example of a good or service relating to the *execution* of trades that the FCA does not regard as meeting the requirements of the *rule* on use of

- dealing commission (■ COBS 11.6.3 R) is post-trade analytics. These would not meet the evidential criteria for a good or service to be directly related to the *execution* of trades under ■ COBS 11.6.4E (1).
- 11.6.7** G Examples of goods or services that relate to the provision of research that the *FCA* does not regard as meeting the requirements of the *rule* on use of dealing commission (■ COBS 11.6.3 R) include price feeds or historical price data that have not been analysed or manipulated in order to present the *investment manager* with meaningful conclusions. These would not meet the evidential criteria for a good or service to amount to the provision of substantive research under ■ COBS 11.6.5E (1).
- 11.6.8** G Examples of goods or services that relate to the *execution* of trades or the provision of research that the *FCA* does not regard as meeting the requirements of either evidential provisions ■ COBS 11.6.4E (1) or ■ COBS 11.6.5E (1) include:
- (1) services relating to the valuation or performance measurement of portfolios;
 - (2) computer hardware;
 - (3) connectivity services such as electronic networks and dedicated telephone lines;
 - (4) seminar fees;
 - (4A) *corporate access services*;
 - (5) subscriptions for publications;
 - (6) travel, accommodation or entertainment costs;
 - (7) order and execution management systems;
 - (8) office administrative computer software, such as word processing or accounting programmes;
 - (9) membership fees to professional associations;
 - (10) purchase or rental of standard office equipment or ancillary facilities;
 - (11) employees' salaries;
 - (12) direct money payments;
 - (13) publicly available information; and
 - (14) *custody services* relating to *designated investments* belonging to, or managed for, *customers* other than those services that are incidental to the *execution* of trades.
- 11.6.8A** G (1) An *investment manager* intending to pass on to its *customers* any *charges* under the exemption at ■ COBS 11.6.3R (3) should have regard

to its duties under the *client's best interests rule*. For example, this means that:

- (a) an *investment manager* should not pass on a *charge* to a *customer* under the exemption at ■ COBS 11.6.3R (3) that is greater than the cost charged by the broker or relevant person specifically for the relevant good or service falling under ■ COBS 11.6.3R (3);
 - (b) if an *investment manager* intends to pass on a *charge* to a *customer* under the exemption at ■ COBS 11.6.3R (3), and the relevant good or service being offered in return for a *broker's* or other *person's charges* is not distinctly priced, the *investment manager* should make a fair assessment of the *charge* that it would be permitted to pass onto its *customer* under that *rule*. In making this determination, the *investment manager* may need to consider whether it can carry out a fact-based analysis of the unpriced good or service. For example, it may be appropriate to use other comparable priced goods or services (whether produced internally or procured from another *person*) or an estimate of the cost of providing a comparable good or service internally as an indication of a fair *charge* to pass onto a *customer* for the relevant good or service; and
 - (c) where the *investment manager* is in a position to negotiate or itself dictate the price of a good or service it receives that is to be charged to a *customer* under the exemption at ■ COBS 11.6.3R (3), it should act honestly, fairly and professionally in accordance with the best interests of its *customer*.
- (2) (a) Where a good or service received by an *investment manager* comprises the provision of substantive research together with elements that are not substantive research (see ■ COBS 11.6.7 G and ■ COBS 11.6.8 G), ■ COBS 11.6.3R (3) only applies for those elements that amount to the provision of substantive research. This means that the *investment manager* should disaggregate any such good or service received, to ensure that it only passes on *charges* under the exemption at ■ COBS 11.6.3R (3) for the substantive research elements that it receives.
- (b) In disaggregating elements under (a), it may be useful for an *investment manager* to consider the amount that it would be willing, in good faith, to pay for those elements of a good or service that cannot be charged to a *customer* under ■ COBS 11.6.3 R. Such an exercise can assist the *investment manager*, when determining the charges to be passed on to the *customer* under the exemption at ■ COBS 11.6.3R (3) for the substantive research elements, to ensure that the *customer* will not subsidise the other elements that benefit the *investment manager*.
 - (c) The guidance under (a) and (b) is equally relevant to situations where:
 - (i) the good or service to be disaggregated is priced as a whole but the elements to be disaggregated are not distinctly priced; and
 - (ii) the overall good or service that is to be disaggregated is not distinctly priced.

(d) The considerations in (1) are equally relevant for any disaggregated good or service.

11.6.9 **G** The reference to substantive research in the *rule* on use of dealing commission (■ COBS 11.6.3 R) is not confined to *investment research* as defined in the *Glossary*. Substantive research can potentially be or include *investment research*, but this is not part of the criteria under ■ COBS 11.6.5 E. In addition, any goods or services that relate to the provision of research that the FCA regards as not acceptable under ■ COBS 11.6.7 G or ■ COBS 11.6.8 G should be viewed as not meeting the requirements of ■ COBS 11.6.3R (3), notwithstanding that their content might qualify as *investment research*.

11.6.10 **G** This section applies only to arrangements under which an *investment manager* receives from brokers or other *persons* a good or service that directly relates to the *execution* of trades or amounts to the provision of substantive research. It has no application in relation to *execution* and research generated internally by an *investment manager* itself.

11.6.11 **G** An *investment manager* should not enter into any arrangements that could compromise its ability to comply with its best execution obligations (■ COBS 11.2).

Rule on prior disclosure

11.6.12 **R** An *investment manager* that enters into arrangements under this section must make adequate prior disclosure to *customers* concerning the receipt of goods or services that directly relate to the *execution* of trades or amount to the provision of substantive research. This prior disclosure should form part of the summary form disclosure under the *rule* on inducements (■ COBS 2.3.1 R).

Guidance on prior disclosure

11.6.13 **G** The *rule* on prior disclosure of goods and services under this section complements the requirements on the disclosure of inducements (■ COBS 2.3.1 R (2)(b)). *Investment managers* should ensure they comply with both requirements where relevant.

11.6.14 **G**

- (1) The prior disclosure required by this section should include an adequate disclosure of the *firm's* policy relating to the receipt of goods or services that directly relate to the execution of trades or amount to the provision of substantive research in accordance with the *rule* on use of dealing commission (■ COBS 11.6.3 R).
- (2) The prior disclosure should explain generally why the *firm* might find it necessary or desirable to use dealing commission to purchase goods or services, bearing in mind the practices in the markets in which it does business on behalf of its *customers*. While the appropriate method of making such a disclosure is for the *firm* to decide, this could, for example, be achieved in a client agreement.

Rule on periodic disclosure

- 11.6.15 **R** If an *investment manager* enters into arrangements in accordance with the *rule* on use of dealing commission (■ COBS 11.6.3 R), it must in a timely manner make adequate periodic disclosure to its *customers* of the arrangements entered into.

Adequate prior and periodic disclosure

- 11.6.16 **R** Adequate prior and periodic disclosure under this section must include details of the goods or services that directly relate to the execution of trades and, wherever appropriate, separately identify the details of the goods or services that are attributable amount to the provision of substantive research.

- 11.6.17 **G** In assessing the adequacy of prior and periodic disclosures made by an *investment manager* under this section, the *FCA* will have regard to the extent to which the *investment manager* adopts disclosure standards developed by industry associations such as the Investment Management Association, the National Association of Pension Funds and the Association for Financial Markets in Europe.

Making periodic disclosures in a timely manner

- 11.6.18 **E**
- (1) A *firm* will make periodic disclosure to its customers under this section in a timely manner if it is made at least once a year.
 - (2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on periodic disclosure (■ COBS 11.6.16 R).

Record keeping

- 11.6.19 **R** An *investment manager* must make a record of each prior and periodic disclosure it makes to its *customers* in accordance with this section and must maintain each such record for at least five years from the date on which it is provided.
- 11.6.20 **G** Firms are also reminded of the general record keeping requirements in ■ SYSC 3.2 and ■ SYSC 9 (as applicable). An *investment manager* should keep appropriate records of the basis on which it concludes that a particular good or service may be received under the exemption at ■ COBS 11.6.3R (3) in return for the *charges* in ■ COBS 11.6.3R (1)(b).

11.7 Personal account dealing

Rule on personal account dealing

11.7.1

R

A firm that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the *Market Abuse Regulation* or to other confidential information relating to *clients* or transactions with or for *clients* by virtue of an activity carried out by him 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 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 12(1) of *MiFID implementing Directive* and article 13(1) of the *UCITS implementing Directive*]

- 11.7.2 **R** For the purposes of this section, the relevant provisions are:
- (1) the *rules on personal transactions* undertaken by *financial analysts* in ■ COBS 12.2.5 R (1) and ■ (2);
 - (2) the *rule on the misuse of information* relating to pending *client orders* in ■ COBS 11.3.5 R.
- 11.7.2A **G** The requirements of this section are without prejudice to the prohibition under article 14(c) of the *Market Abuse Regulation*.
- 11.7.3 **G** For the purposes of ■ COBS 11.7.1R (1)(c), any other obligation of the *firm* under *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*.
- 11.7.4 **R** The arrangements required under this section must in particular be designed to ensure that:
- (1) each *relevant person* covered by this section is aware of the restrictions on *personal transactions*, and of the measures established by the *firm* in connection with *personal transactions* and disclosure, in accordance with this section;
 - (2) the *firm*:
 - (a) is informed promptly of any *personal transaction* entered into by a *relevant person*, either by notification of that transaction or by other procedures enabling the *firm* to identify such transactions; or
 - (b) in the case of *outsourcing* arrangements, ensures that the service provider to which the activity is *outsourced* maintains a record of *personal transactions* entered into by any *relevant person* and provides that information to the *firm* promptly on request;
 - (3) a record is kept of the *personal transaction* notified to the *firm* or identified by it, including any authorisation or prohibition in connection with such a transaction.
- [Note: article 12(2) of *MiFID implementing Directive* and article 13(2) of the *UCITS implementing Directive*]
- Disapplication of rule on personal account dealing**.....
- 11.7.5 **R** This section does not apply to the following kinds of *personal transaction*:
- (1) *personal transactions* effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the *relevant person* or other *person* for whose account the transaction is executed;
 - (2) *personal transactions* in *units* or *shares* in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by

the *UCITS Directive* or are subject to supervision under the law of an *EEA State* which requires an equivalent level of risk spreading in their assets, where the *relevant person* and any other *person* for whose account the transactions are effected, are not involved in the management of that undertaking;

(3) *personal transactions in life policies*.

[**Note:** article 12(3) of *MiFID implementing Directive* and article 13(3) of the *UCITS implementing Directive*]

11.7.6

R

For the purposes of this section, a *person* who is not:

- (1) a director, partner or equivalent, manager or *appointed representative* (or, where applicable, a *tied agent*) of the *firm*; or
- (2) a director, partner or equivalent, or manager of any *appointed representative* (or where applicable, a *tied agent*) of the *firm*;

will only be a *relevant person* to the extent that they are involved in the provision of *designated investment business* or *collective portfolio management services*.

Successive personal transactions

11.7.7

R

Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this section do not apply:

- (1) separately to each successive transaction if those instructions remain in force and unchanged; or
- (2) to the termination or withdrawal of such instructions, provided that any *financial instruments* which had previously been acquired pursuant to the instructions are not disposed of at the same time as the instructions terminate or are withdrawn.

Obligations under this section do apply in relation to a *personal transaction*, or the commencement of successive *personal transactions*, that are carried out on behalf of the same *person* if those instructions are changed or if new instructions are issued.

[**Note:** recital 17 to *MiFID implementing Directive*]

11.8 Recording telephone conversations and electronic communications

Application - Who?

11.8.1

R

This section applies to a *firm*:

- (1) which carries out any of the following activities:
 - (a) receiving *client* orders;
 - (b) executing *client* orders;
 - (c) arranging for *client* orders to be executed;
 - (d) carrying out transactions on behalf of the *firm*, or another person in the *firm's* group, and which are part of the *firm's* trading activities or the trading activities of another person in the *firm's* group;
 - (e) executing orders that result from decisions by the *firm* to deal on behalf of its *client*;
 - (f) placing orders with other entities for execution that result from decisions by the *firm* to deal on behalf of its *client*;
- (2) to the extent that the activities referred to in (1) relate to:
 - (a) *financial instruments* admitted to trading on a *prescribed market*; or
 - (b) *financial instruments* in respect of which a request for admission to trading on such a market has been made; or
 - (c) instruments which are *related investments* in relation to such *financial instruments*.

11.8.2

R

This section does not apply to the carrying on of the following activities:

- (1) activities carried on between *operators*, or between *operators* and depositories, of the same *fund* (when acting in that capacity);
- (2) *corporate finance business*;
- (3) corporate treasury functions.

11.8.3

R

This section does not apply to the following *firms* or *persons*:

- (1) a *service company*;

(2) a *non-directive friendly society*;

(3) a *non-directive insurer*;

(4) a *UCITS qualifier*.

Application - Where?

11.8.4 **R** This section applies only with respect to a *firm's* activities carried on from an establishment maintained by the *firm* in the *United Kingdom*.

Recording telephone conversations, etc

11.8.5 **R** A *firm* must take reasonable steps to record relevant telephone conversations, and keep a copy of relevant electronic communications, made with, sent from or received on equipment:

(1) provided by the *firm* to an employee or contractor; or

(2) the use of which by an employee or contractor has been sanctioned or permitted by the *firm*;

to enable that employee or contractor to carry out any of the activities referred to in **■ COBS 11.8.1 R**.

11.8.5A **R** A *firm* must take reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the *firm* is unable to record or copy.

11.8.6 **R** The obligation in **■ COBS 11.8.5 R** and **■ COBS 11.8.5A R** does not apply to:

(1) [deleted]

(2) a *discretionary investment manager*, in respect of telephone conversations or electronic communications made with, sent to or received from a *firm* which the *discretionary investment manager* reasonably believes is subject to the recording obligation in **■ COBS 11.8.5 R** in respect of that conversation or communication; or

(3) a *discretionary investment manager*, in respect of telephone conversations or electronic communications made with, sent to or received from a *person* who is not subject to the recording obligation in **■ COBS 11.8.5 R**, provided that such telephone conversations or electronic communications are made with, sent to or received from such *persons* on an infrequent basis, and represent a small proportion of the total telephone conversations and electronic communications made, sent or received by the *discretionary investment manager* to which **■ COBS 11.8.5 R** apply.

11.8.7 **G** Electronic communications includes communications made by way of facsimile, email and instant messaging devices.

- 11.8.8** **R** For the purposes of **■ COBS 11.8.5 R** and **■ COBS 11.8.5A R** a relevant conversation or communication is any one of the following:
- (1) a conversation or communication between an employee or contractor of the *firm* with a *client*, or when acting on behalf of a *client*, with another *person*, which concludes an agreement by the *firm* to carry out the activities referred to in **■ COBS 11.8.1 R** as principal or as agent;
 - (2) a conversation or communication between an employee or contractor of the *firm* with a *professional client* or an *eligible counterparty*, or when acting on behalf of a *professional client* or an *eligible counterparty*, with another *person*, which is carried on with a view to the conclusion of an agreement referred to in (1) above, and whether or not it is part of the same conversation or communication as in (1).

- 11.8.9** **G**
- (1) **■ COBS 11.8.8R (2)** includes conversations and communications relating to specific transactions which are intended to lead to the conclusion of an agreement by the *firm* to deal with or on behalf of the *client* as principal or agent, even if those conversations or communications do not lead to the conclusion of such an agreement. It does not include conversations or communications which are not intended to lead to the conclusion of such an agreement, such as general conversations or communications about market conditions.
 - (2) The *FCA* would not usually expect the obligation in **■ COBS 11.8.5 R** to include conversations or communications made by investment analysts, retail financial advisers, and persons carrying on back office functions, as such persons will not normally make relevant conversations or communications when acting in those capacities.

Retention of records

- 11.8.10** **R** A *firm* must take reasonable steps to retain all records made by it under **■ COBS 11.8.5 R**:
- (1) for a period of at least 6 *months* from the date the record was created;
 - (2) in a medium that allows the storage of the information in a way accessible for future reference by the *FCA*, and so that the following conditions are met:
 - (a) the *FCA* must be able to access the records readily;
 - (b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and amendments, to be easily ascertained;
 - (c) it must not be possible for the records to be otherwise manipulated or altered.

