

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** Save as may be provided in the relevant sections, in this chapter, provisions marked "EU" apply to a *firm* which is not a *MiFID investment firm* as if they were *rules*.
- 11.1.3 **R** [deleted]

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

Disapplication of best execution for non-financial spreads

- 11.1.6 **R** The section on best execution (■ COBS 11.2A) does not apply to a *firm* when:
- (1) executing orders: or
- (2) placing orders with other entities for execution: or
- (3) transmitting orders to other entities for execution;

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

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

11.1.7

R

The section on best execution (■ COBS 11.2 or ■ COBS 11.2B, as applicable) does not apply to a *firm* when, acting in the capacity of *operator* of a *regulated collective investment scheme*, it purchases or sells *units* in that *scheme*.

11.2 Best execution for AIFMs and residual CIS operators

Application

- 11.2.-7 **G** This section applies to:
- (1) a small authorised *UK AIFM* and a *residual CIS operator* in accordance with ■ COBS 18.5.2R; and
 - (2) a *full-scope UK AIFM* and an *incoming EEA AIFM branch*, in accordance with ■ COBS 18.5A.3R.
- 11.2.-6 **G** In accordance with ■ COBS 18.5.4R, this section does not apply to a small authorised *UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* of a fund whose *fund* documents include a statement that best execution does not apply in relation to the *fund* and in which:
- (1) no investor is a *retail client*; or
 - (2) no current investor in the *fund* was a *retail client* when it invested in the *fund*.
- 11.2.-5 **G** In accordance with ■ COBS 18.5A.8R, only the following provisions of this section apply to a *full-scope UK AIFM* and an *incoming EEA AIFM branch*:
- COBS 11.2.5G;
 - COBS 11.2.17G;
 - COBS 11.2.23AR;
 - COBS 11.2.24R;
 - COBS 11.2.25R(1) and ■ COBS 11.2.26R, but only where an *AIF* itself has a governing body which can provide prior consent; and
 - COBS 11.2.27R, but only regarding the obligation on an *AIFM* to notify the *AIF* of any material changes to its order execution arrangements or execution policy.
- 11.2.-4 **G** A *firm* to which this section applies may comply with its obligations under this section by complying with the *rules* in ■ COBS 11.2B (Best execution for UCITS management companies).

Modifications

- 11.2.-3 **G** In accordance with ■ COBS 18.5.3R(1) and ■ COBS 18.5A.5R, references in this section to *customer* or *client* are to any *fund* for which the *firm* is acting or intends to act.
- 11.2.-2 **G** In accordance with ■ COBS 18.5.1AR and ■ COBS 18.5.3R(2), in the case of a small authorised *UK AIFM* of an unauthorised *AIF* which is a *collective investment scheme*, or a *residual CIS operator*, when a *firm* is required by the *rules* in this section to provide information to, or obtain consent from, a *fund*, the *firm* must ensure that the information is provided to, or consent obtained from, an investor or a potential investor in the *fund* as the case may be.
- 11.2.-1 **G** In accordance with ■ COBS 18.5.3R(3) and ■ COBS 18.5A.9R, references to the service of *portfolio management* in this section are to be read as references to the management by a *firm* of *financial instruments* held for or within the *fund*.

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: The Committee of European Securities Regulators (CESR) has issued a Question and Answer paper on best execution under the first Markets in Financial Instruments Directive (MiFID I, 2004/39/EU). This paper also incorporates the European Commission's response to CESR's questions regarding the scope of the best execution obligations under MiFID I. The paper can be found at:https://www.esma.europa.eu/sites/default/files/library/2015/11/07_320.pdf]

- 11.2.1A **R** [deleted]

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*.
- 11.2.3 **G** [deleted]
- 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.

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*.

11.2.5A **G**

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; and
- (4) the characteristics of the *execution venues* to which that order can be directed.
- (5) [deleted] *instrument constituting the fund*.

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.

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*.

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.

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*.

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

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.

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.

- 11
- 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.
- 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*.
- 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.
- 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.
- 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.
 - (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.
- 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.

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*.

Information about the order execution policy

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

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.

11.2.23A **R** A *full-scope UK AIFM* and an *incoming EEA AIFM branch* must make available appropriate information on its execution policy required under article 27(3) of the *AIFMD level 2 regulation* (Execution of decisions to deal on behalf of the managed AIF) and on any material changes to that policy to the investors in of each *AIF* it manages.

11.2.24 **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.

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

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

(2) [deleted]

(3) [deleted]

- 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.

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.

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.

Demonstration of execution of orders in accordance with execution policy

- 11.2.29 **R**
- (1) A *firm* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.

(2) [deleted]

and article 25(5) of the *UCITS implementing Directive*]

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

11.2.30 **R** A *firm* must, when providing the service of *portfolio management*, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

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.

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:

(1) take all reasonable steps to obtain the best possible result for its *clients* taking into account the *execution factors*. The relative importance of these factors must be determined by reference to the *execution criteria* and, for *retail clients*, to the requirement to determine the best possible result in terms of the total consideration (see ■ COBS 11.2.7 R).

A *firm* satisfies its obligation to act in accordance with the best interests of its *clients*, and is not required to take the steps mentioned above, to the extent that it follows specific instructions from its *client* when placing an order with, or transmitting an order to, another entity for execution;

(2) establish and implement a policy to enable it to comply with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. The policy must identify, in respect of each class of instruments, the entities with which the orders are placed or to which the *firm* transmits orders for execution. The entities identified must have execution arrangements that enable the *firm* to comply with its obligations under this section when it places an order with, or transmits an order to, that entity for execution;

(3) provide appropriate information to its *clients* on the policy established in accordance with paragraph (2);

(4) monitor on a regular basis the effectiveness of the policy and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies; and

(5) review the policy annually. This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for its *clients*.

11.2.32A **R** [deleted]

11.2.33 **G** This section is not intended to require a duplication of effort as to best execution between a *firm* which provides the service of reception and transmission of orders or *portfolio management* and any *firm* to which that *firm* transmits its orders for execution.

11.2.34 **R** The provisions applying to a *firm* which places orders with, or transmits orders to, other entities for execution (see **R** COBS 11.2.30 R to **G** 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 **R** COBS 11.2.1 R to **R** COBS 11.2.29 R).

11.2A Best execution – MiFID provisions

11.2A.1 **R**

- (1) Subject to (2) to (4), the following provisions apply to a *firm's* business other than *MiFID business* as if they were *rules*:
 - (a) provisions within this chapter marked "EU"; and
 - (b) ■ COBS 11 Annex 1EU.
- (2) The following provisions do not apply to *MiFID optional exemption firm's business*:
 - (a) the part of the first sub-paragraph of article 65(6) to the *MiFID Org Regulation* (reproduced at ■ COBS 11.2A.34EU) that reads:

"In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU."; and
 - (b) ■ COBS 11 Annex 1EU.
- (3) This chapter does not apply (but ■ COBS 11.2B applies) to *UCITS management companies* when carrying on *scheme management activity*.
- (4) This chapter does not apply (but ■ COBS 11.2 applies) to *AIFMs* when carrying on *AIFM investment management functions* and *residual CIS operators*.

Obligation to execute orders on terms most favourable to the client

11.2A.2 **R**

- (1) A *firm* must take all sufficient steps to obtain, when executing orders, the best possible results for its *clients* taking into account the *execution factors*.
- (2) The *execution factors* to be taken into account are price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order.

[Note: article 27(1) of *MiFID*]

Application of best execution obligation

- 11.2A.3** **G** The obligation to take all sufficient steps to obtain the best possible result for its *clients* (see **■** COBS 11.2A.2) should apply where a *firm* owes contractual or agency obligations to the *client*.
[Note: recital 91 to, and article 27(1) of, *MiFID*]
- 11.2A.4** **G** Dealing on own account with *clients* by a *firm* should be considered as the execution of *client* orders, and therefore subject to the requirements under *MiFID*, in particular, those obligations in relation to best execution.
[Note: first sentence, recital 103 to the *MiFID Org Regulation*]
- 11.2A.5** **G** Dealing on own account when executing *client* orders includes the execution by *firms* of orders from different *clients* on a matched principal basis (back-to-back trading). Such activities are regarded as acting as *principal* and are subject to the requirements of this chapter in relation to both execution of orders on behalf of *clients* and *dealing on own account*.
[Note: recital 24 to *MiFID*]
- 11.2A.6** **G** However if a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all sufficient steps to obtain the best possible result for its *clients* under **■** COBS 11.2A.2R if the *firm* executed that quote at the time it was provided, then the *firm* will meet those same obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.
[Note: second sentence, recital 103 to the *MiFID Org Regulation*]
- 11.2A.7** **G** The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures and the structure of financial instruments, it may be difficult to identify and apply a uniform standard of, and procedure for, best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied to take into account the different circumstances surrounding the execution of orders for particular types of *financial instruments*. For example, transactions involving a customised *OTC financial instrument* with a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving *shares* traded on centralised *execution venues*. As best execution obligations apply to all *financial instruments*, irrespective of whether they are traded on *trading venues* or *OTC*, *firms* should gather relevant market data in order to check whether the *OTC* price offered for a *client* is fair and delivers on the best execution obligation.
[Note: recital 104 to the *MiFID Org Regulation*]

Best execution criteria

- 11.2A.8** **EU** Article 64 of the *MiFID Org Regulation* sets out best execution criteria.
64(1) When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in Article 27(1) of Directive 2014/65/EU:

- (a)the characteristics of the client including the categorisation of the client as retail or professional;
- (b)the characteristics of the client order, including where the order involves a securities financing transaction (SFT);
- (c)the characteristics of financial instruments that are the subject of that order;
- (d)the characteristics of the execution venues to which that order can be directed.

For the purpose of this Article and Articles 65 and 66, ‘execution venue’ includes a regulated market, an MTF, an OTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the function performed by any of the foregoing.

(2)An investment firm satisfies its obligation under Article 27(1) of Directive 2014/65/EU to take all sufficient steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

(3)Investment firms shall not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

(4)When executing orders or taking decision to deal in OTC products including bespoke products, the investment firm shall check the fairness of the price proposed to the client, by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

Role of price

11.2A.9

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: article 27(1) of *MiFID*]

11.2A.10

G

When a *firm* executes a *retail client’s* order in the absence of specific *client* instructions, for the purposes of ensuring that the *firm* obtains the best possible result for the *client*, the *firm* should take into consideration all factors that will enable it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution.

[Note: recital 101 to the *MiFID Org Regulation*]

11.2A.11

G

Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as

they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.

[Note: recital 101 to the *MiFID Org Regulation*]

Following specific instructions from a client

- 11.2A.12 **R** Whenever there is a specific instruction from the client, a *firm* must execute the order following the specific instruction.

[Note: article 27(1) of *MiFID*]

- 11.2A.13 **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 102 to the *MiFID Org Regulation*]

- 11.2A.14 **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 102 to the *MiFID Org Regulation*]

Delivering best execution where there are competing execution venues

- 11.2A.15 **R** A *firm's* own commissions and the costs for executing an order in each of the eligible *execution venues* must be taken into account when assessing and comparing the results that would be achieved for a *client* by executing the order on each of the *execution venues* listed in the *firm's* execution policy that is capable of executing that order.

[Note: article 27(1) of *MiFID*]

- 11.2A.16 **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 93 to *MiFID*]

11.2A.17 **G** A *firm* would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charged a different commission or spread to *clients* for execution on different *execution venues* and that difference did not reflect actual differences in the cost to the *firm* of executing on those venues.

[Note: recital 95 to *MiFID*]

11.2A.18 **G** The provisions of this section which provide that costs of execution include a *firm's* own commission or fees charged to the *client* for the provision of an investment service should not apply for the purpose of determining what *execution venues* must be included in the *firm's* execution policy in accordance with ■ COBS 11.2A.21R.

[Note: recital 94 to *MiFID*]

11.2A.19 **R** A *firm* must not receive any remuneration, discount or non-monetary benefit for routing *client* orders to a particular *trading venue* or *execution venue* which would infringe the requirements on conflicts of interests (as set out in ■ SYSC 10) or inducements as set out in ■ COBS 2.3 (for *firms* carrying on business other than *MiFID*, *equivalent third country* or *optional exemption business*) and in ■ COBS 2.3A, ■ COBS 2.3B and ■ COBS 2.3C (for *firms* carrying on *MiFID*, *equivalent third country* or *optional exemption business*).

[Note: article 27(2) of *MiFID*]

Requirement for order execution arrangements including an order execution policy

11.2A.20 **R** A *firm* must establish and implement effective arrangements for complying with the obligation to take all sufficient steps to obtain the best possible results for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, in accordance with ■ COBS 11.2A.2R, the best possible result for the execution of *client* orders.

[Note: article 27(4) of *MiFID*]

11.2A.21 **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: article 27(5) of *MiFID*]

11.2A.22 **R**

- (1) A *firm* must provide appropriate information to its *clients* on its order execution policy.
- (2) That information must explain clearly how orders will be executed by the *firm* for the *clients*.
- (3) The information must include sufficient details and be provided in a way that can be easily understood by *clients*.

[Note: article 27(5) of *MiFID*]

11.2A.23 **R** (1) A *firm* must obtain the prior consent of its *clients* to the execution policy.

[Note: article 27(5) of MiFID]

11.2A.24 **R** (1) Where a *firm's* order execution policy provides for the possibility that *client* orders may be executed outside a *trading venue*, a *firm* must, in particular, inform its *clients* about that possibility.

(2) A *firm* must obtain the express prior consent of its *clients* before proceeding to execute their orders outside a *trading venue*.

(3) A *firm* may obtain such consent either in the form of a general agreement or in respect of individual transactions.

[Note: article 27(5) of MiFID]

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

66 (1) Investment firms shall review, at least on an annual basis execution policy established pursuant to Article 27(4) of Directive 2014/65/EU, as well as their order execution arrangements.

Such a review shall also be carried out whenever a material change as defined in Article 65(7) occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy. An investment firm shall assess whether a material change has occurred and shall consider making changes to the relative importance of the best execution factors in meeting the overarching best execution requirement.

(2) The information on the execution policy shall be customised depending on the class of financial instrument and type of the service provided and shall include information set out in paragraphs 3 to 9.

(3) Investment firms shall provide clients with the following details on their execution policy in good time prior to the provision of the service:

(a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 59(1), to the factors referred to in Article 27(1) of Directive 2014/65/EU, or the process by which the firm determines the relative importance of those factors.

(b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders and specifying which execution venues are used for each class of financial instruments, for retail client orders, professional client orders and SFTs;

(c) a list of factors used to select an execution venue, including qualitative factors such as clearing schemes, circuit breakers, scheduled actions, or any other relevant consideration, and the relative importance of each factor; The information about the factors used to select an execution venue for execution shall be consistent with the controls used by the firm to demonstrate to clients that best execution has been achieved in a consistent basis when reviewing the adequacy of its policy and arrangements;

(d) how the execution factors of price costs, speed, likelihood of execution and any other relevant factors are considered as part of all sufficient steps to obtain the best possible result for the client;

(e) where applicable, information that the firm executes orders outside a trading venue, the consequences, for example counterparty risk arising from execution outside a trading venue, and upon client request, additional information about the consequences of this means of execution;

(f) a clear and prominent warning that any specific instruction from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;

(g) a summary of the selection process for execution venues, execution strategies employed, the procedures and process used to analyse the quality of execution obtained and how the firms monitor and verify that the best possible results were obtained for clients.

That information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

(4) Where investment firms apply different fees depending on the execution venue, the firm shall explain these differences in sufficient detail in order to allow the client to understand the advantages and the disadvantages of the choice of a single execution venue.

(5) Where investment firms invite clients to choose an execution venue, fair, clear and not misleading information shall be provided to prevent the client from choosing one execution venue rather than another on the sole basis of the price policy applied by the firm.

(6) Investment firms shall only receive third-party payments that comply with Article 24(9) of Directive 2014/65/EU and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.

(7) Where an investment firm charges more than one participant in a transaction, in compliance with Article 24(9) of Directive 2014/65/EU and its implementing measures, the firm shall inform its client of the value of any monetary or non-monetary benefits received by the firm.

(8) Where a client makes reasonable and proportionate requests for information about its policies or arrangements and how they are reviewed to an investment firm, that investment firm shall answer clearly and within a reasonable time.

(9) Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total cost they incur. The summary shall also provide a link to the most recent execution quality data published in accordance with Article 27(3) of Directive 2014/65/EU for each execution venue listed by the investment firm in its execution policy.

11.2A.26 G

- (1) When establishing its execution policy in accordance with ■ COBS 11.2A.20R a *firm* should determine the relative importance of the factors mentioned in ■ COBS 11.2A.2R(2), or at least establish the

process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its *clients*.

- (2) Ordinarily, the *FCA* would expect that price will merit a high relative importance in obtaining the best possible result for *professional clients*. However, in some circumstances for some *clients*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible execution result.
- (3) In order to comply with the obligation of best execution, a *firm*, when applying the criteria for best execution for *professional clients*, will typically not use the same *execution venues* for *securities financing transactions* and other transactions. This is because the *securities financing transactions* are used as a source of funding subject to a commitment that the borrower will return equivalent securities on a future date and the terms of the *securities financing transactions* are typically defined bilaterally between the counterparties ahead of the execution. Therefore, the choice of *execution venues* for *securities financing transactions* is more limited than in the case of other transactions, given that it depends on the particular terms defined in advance between the *counterparties* and on whether there is a specific demand on those *execution venues* for the *financial instruments* involved. As a result, the order execution policy established by *firms* should take into account the particular characteristics of *securities financing transactions* and it should list separately *execution venues* used for *securities financing transactions*.

[Note: recital 99 to the *MiFID Org Regulation*]

- 11.2A.27 **G** A *firm* should apply its execution policy to each *client* order that it executes with a view to obtaining the best possible result for the *client* in accordance with that policy.

[Note: recital 99 to the *MiFID Org Regulation*]

- 11.2A.28 **G** The obligation to take all sufficient steps to obtain the best possible result for the *client* should not be treated as requiring a firm to include in its execution policy all available *execution venues*.

- 11.2A.29 **G** An *investment firm* executing orders should be able to include a single *execution venue* in their policy only where they are able to show that this allows them to obtain best execution for their *clients* on a consistent basis. *Investment firms* should select a single *execution venue* only where they can reasonably expect that the selected *execution venue* will enable them to obtain results for *clients* that are at least as good as the results that they could reasonably expect from using alternative *execution venues*. This reasonable expectation must be supported by relevant data published in accordance with:

- (1) ■ COBS 11.2A.38G;
 (2) ■ COBS 11.2A.39R;
 (3) ■ COBS 11.2C; and

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

[Note: recital 108 to the *MiFID Org Regulation*]

11.2A.30 **G** The provisions of this section as to execution policy are without prejudice to the general obligation of a *firm* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

[Note: recital 105 to the *MiFID Org Regulation*]

11.2A.31 **R**

(1) A *firm* must monitor the effectiveness of its order execution arrangements and execution policy to identify and, where appropriate, correct any deficiencies. In particular it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements taking into account the information published in accordance with:

- (a) ■ COBS 11.2A.38G;
- (b) ■ COBS 11.2A.39R; and
- (c) ■ COBS 11.2C.

(2) The *firm* must notify *clients* of any material changes to its order execution arrangements or execution policy.

[Note: article 27(7) of *MiFID*]

11.2A.32 **R**

(1) A *firm* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.

(2) A *firm* must be able to demonstrate to the *FCA*, at the request of that authority, its compliance with ■ COBS 11.2A.2R and with the related provisions in this chapter which require *firms* to execute orders on terms most favourable to the *client*.

[Note: article 27(8) of *MiFID*]

11.2A.33 **G** In order to obtain the best execution for a client, a *firm* should compare and analyse relevant data, including that made public in accordance with ■ COBS 11.2A.38G, ■ COBS 11.2C and article 27(3) of *MiFID* and respective implementing measures.

[Note: recital 107 to the *MiFID Org Regulation*]

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

11.2A.34 **EU** Article 65 of the *MiFID Org Regulation* sets out the duty of *firms* carrying out certain activities to act in the best interests of the *client*.

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

accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

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

(3) In order to comply with paragraphs 1 or 2, investment firms shall comply with paragraphs 4 to 7 of this Article and Article 64(4).

(4) Investment firms shall take all sufficient steps to obtain the best possible result for their clients taking into account the factors referred to in Article 27(1) of Directive 2014/65/EU. The relative importance of these factors shall be determined by reference to the criteria set out in Article 64(1) and, for retail clients, to the requirement under Article 27(1) of Directive 2014/65/EU.

An investment firm satisfies its obligations under paragraph 1 or 2, and is not required to take the steps mentioned in this paragraph, to the extent that it follows specific instructions from its client when placing an order with, or transmitting an order to, another entity for execution.

(5) Investment firms shall establish and implement a policy that enables them to comply with the obligation in paragraph 4. The policy shall identify, in respect of each class of instruments, the entities with which the orders are placed or to which the investment firm transmits orders for execution. The entities identified shall have execution arrangements that enable the investment firm to comply with its obligations under this Article when it places or transmits orders to that entity for execution.

(6) Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. In particular, when the investment firm selects other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU.

Upon reasonable request from a client, investment firms shall provide its clients or potential clients with information about entities where the orders are transmitted or placed for execution.

(7) Investment firms shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 5 and, in particular, shall monitor the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

Investment firms shall review the policy and arrangements at least annually. Such a review shall also be carried out whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for their clients.

Investment firms shall assess whether a material change has occurred and shall consider making changes to the execution venues or entities on which they place significant reliance in meeting the overarching best execution requirement.

A material change shall be a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

(8) This Article shall not apply where the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases Article 27 of Directive 2014/65/EU shall apply.

11.2A.35 **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 106 to the *MiFID Org Regulation*]

11.2A.36 **G** A *firm* transmitting or placing orders with other entities for execution may select a single entity for execution only where the *firm* is able to show that this provides the best possible result for their *clients* on a consistent basis and where they can reasonably expect that the selected entity will enable them to obtain results for *clients* that are at least as good as the results that could reasonably be expected from using alternative entities for execution. This reasonable expectation should be supported by relevant data published in accordance with:

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

[Note: recital 100 to the *MiFID Org Regulation*]

Providing information to clients on order execution

11.2A.37 **R** Following the execution of a transaction on behalf of a *client* a *firm* must inform the *client* of where the order was executed.

[Note: article 27(3) of *MiFID*]

Publishing information on execution quality

11.2A.38 **G** *Execution venues* (other than market makers and other liquidity providers to which ■ COBS 11.2C applies) are reminded of the need to comply with the following provisions:

- (1) ■ MAR 5.3.1A R(5);
- (2) ■ MAR 5A.4.2R(3);
- (3) ■ MAR 6.3A.1R; and

(4) paragraph 4C of the Schedule to the *Recognition Requirements Regulations*.

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

11.2A.39 **R**

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

[Note: article 27(6) of *MiFID* and *MiFID RTS 28*]

11.2B Best execution for UCITS management companies

Application

- 11.2B.1** **G** This section applies to a *UCITS management company* when carrying on *scheme management activity*, in accordance with ■ COBS 18.5B.2R.
- 11.2B.2** **G** A *firm* that is subject to ■ COBS 11.2 (Best execution for AIFMs and residual CIS providers) may comply with its obligations under ■ COBS 11.2 by complying with the *rules* in this chapter.
- 11.2B.3** **G** References in this chapter to a *scheme* are to a *UCITS scheme* or an *EEA UCITS scheme*.

Obligation to execute orders on terms most favourable to the scheme

- 11.2B.4** **R** A *management company* must act in the best interests of each *scheme* it manages when *executing* decisions to deal on behalf of the *scheme*.
- [Note: article 25(1) of the *UCITS implementing Directive*]
- 11.2B.5** **R** A *management company* must take all sufficient steps to obtain, when *executing* decisions to deal, the best possible result for each *scheme* it manages, taking into account:
- (1) price;
 - (2) costs;
 - (3) speed;
 - (4) likelihood of execution;
 - (5) likelihood of settlement;
 - (6) order size and nature; and
 - (7) any other consideration relevant to the execution of the decision to deal,

(together the "*execution factors*").

[Note: article 25(2) first sentence of the *UCITS implementing Directive*]

- 11.2B.6** **G** (1) The obligation to deliver the best possible result applies for all types of *financial instrument*. However, given the differences in market structures and the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of, and procedure for, best execution that would be valid and effective for all types of *financial instrument*.
- (2) Best execution obligations should therefore be applied to take into account the different circumstances surrounding the execution of orders for particular types of *financial instrument*. For example, transactions involving a customised *OTC financial instrument* with a unique contractual relationship tailored to the circumstances of the *scheme* and the *management company* may not be comparable for best execution purposes with transactions involving *shares* traded on centralised *execution venues*.
- (3) As best execution obligations apply to all *financial instruments*, irrespective of whether they are traded on *trading venues* or *OTC*, *management companies* should gather relevant market data to check whether the *OTC* price offered for a *scheme* is fair and delivers on the best execution obligation.
- 11.2B.7** **R** A *management company* must determine the relative importance of the *execution factors*, taking into account the following criteria:
- (1) the objectives, investment policy and risks specific to the *scheme*, as indicated in its *prospectus* or *instrument constituting the fund*;
- (2) the characteristics of the order, including where the order involves a *securities financing transaction*;
- (3) the characteristics of the *financial instruments* that are the subject of that order; and
- (4) the characteristics of the *execution venues* to which that order can be directed.
- [**Note:** article 25(2) second sentence of the *UCITS implementing Directive*]
- 11.2B.8** **R** A *management company* must take into account its own commissions and costs for executing an order, when assessing and comparing the results that would be achieved for a *scheme* by executing the order on each of the *execution venues* listed in the *management company's* execution policy that is capable of executing that order.
- 11.2B.9** **G** The requirement in **COBS 11.2B.8R** that costs of execution include a *management company's* own commission or fees charged to the scheme should not apply for the purpose of determining which *execution venues* are included in the firm's execution policy in accordance with **COBS 11.2B.18R**.
- 11.2B.10** **R** A *management company* must not receive any remuneration, discount or non-monetary benefit for routing orders to a particular *trading venue* or *execution venue* which would infringe the requirements on conflicts of interest (in **SYSC 10**) or inducements (in **COBS 2.3** and **COBS 18 Annex 1**).

11.2B.11 **R** A *management company* must not structure or charge its *commission* in a way that discriminates unfairly between *execution venues*.

11.2B.12 **G** A *management company* would be considered to discriminate unfairly between *execution venues* if it charged a different commission or spread to *schemes* for execution on different *execution venues* and that difference did not reflect actual differences in the cost to the *management company* of executing on those venues.

11.2B.13 **R** When executing orders or taking decisions to deal in *OTC* products including bespoke products, the *management company* must check the fairness of the price proposed to the *scheme*, by gathering market data used to estimate the price of such products and, where possible, by comparing with similar or comparable products.

When executing orders or taking decisions to deal in OTC products including bespoke products, the management company must check the fairness of the price proposed to the scheme, by gathering market data used to estimate the price of such products and, where possible, by comparing with similar or comparable products.

11.2B.14 **R** A *management company* must act in the best interests of each *scheme* it manages when placing orders to deal on behalf of that *scheme* with other entities for execution.

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

11.2B.15 **R** (1) A *management company* must take all sufficient steps to obtain the best possible result for each *scheme* it manages when placing orders to deal on behalf of that *scheme* with other entities, taking into account the *execution factors*.

(2) A *management company* must determine the relative importance of the *execution factors* in accordance with ■ COBS 11.2B.7R.

[Note: article 26(2) first and second sentences of the first paragraph of the *UCITS implementing Directive*]

11.2B.16 **G** This section is not intended to require a duplication of effort as to best execution between a *management company* and any firm with which that *management company* places its orders for execution.

11.2B.17 **R** (1) A *management company* must establish and implement effective arrangements for complying with the obligation to take all sufficient steps to obtain the best possible result for each *scheme* it manages.

(2) In particular, the *management company* must establish and implement an order execution policy to allow it to obtain the best possible result for each *scheme* it manages when:

(a) executing orders on behalf of the *scheme* (in accordance with ■ COBS 11.2B.5R); and

- (b) placing orders with other entities for execution (in accordance with ■ COBS 11.2B.15R(1)).

[**Note:** articles 25(3) first paragraph and 26(2) third sentence of the first paragraph of the *UCITS implementing Directive*]

11.2B.18 **R**

- (1) The order execution policy must include, for each type of *financial instrument*, information on the different *execution venues* where the *management company* executes its *scheme orders* and the factors affecting the choice of *execution venue*.
- (2) It must at least include *execution venues* that enable the *management company* to obtain the best possible result for the execution of *scheme orders* on a consistent basis.

11.2B.19 **G**

The obligation in ■ COBS 11.2B.17R does not require a *management company* to include all available *execution venues* in its execution policy.

11.2B.20 **G**

- (1) When establishing its execution policy in accordance with ■ COBS 11.2B.17R(2), a *management company* should determine the relative importance of the *execution factors*, or at least establish the process by which it determines the relative importance of these factors.
- (2) Ordinarily, the *FCA* would expect that price will merit a high relative importance in obtaining the best possible result. However, in some circumstances for some *schemes*, *orders*, *financial instruments* or *markets*, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible result.
- (3) A *management company*, when applying the criteria for best execution, will typically not use the same *execution venues* for *securities financing transactions* and other transactions. As a result, the order execution policy should take into account the particular characteristics of *securities financing transactions* and it should list separately *execution venues* used for *securities financing transactions*.

11.2B.21 **R**

- (1) The order execution policy must identify, for each type of *financial instrument*, the entities with which orders are placed or to which the *management company* transmits orders for execution.
- (2) The entities identified must have execution arrangements that enable the *management company* to comply with its obligations under this section when it places or transmits orders to that entity for execution.

[**Note:** article 26(2) fourth sentence of the first paragraph and first sentence of the second paragraph]

11.2B.22 **G**

- (1) A *management company* may specify a single *execution venue*, or a single entity with which it places orders for execution, in its execution policy where it:

- (a) is able to show that this allows it to obtain best execution, or, when placing orders for execution, the best possible result, for the *schemes* it manages on a consistent basis; and
 - (b) can reasonably expect that the selected *execution venue* or entity will enable it to obtain results for each *scheme* that are at least as good as the results that it could reasonably expect from using alternative *execution venues* or entities.
- (2) The reasonable expectation in (1)(b) should be supported by:
- (a) relevant data published in accordance with ■ COBS 11.2A.39R, ■ COBS 11.2B.36R, ■ COBS 11.2C and the provisions referred to in ■ COBS 11.2B.30G; or
 - (b) other internal analyses conducted by the *management company*.

11.2B.23 **R** A *management company* must be able to demonstrate that it has executed or placed orders on behalf of each *scheme* it manages in accordance with its execution policy.

[Note: articles 25(5) and 26(4) of the *UCITS implementing Directive*]

11.2B.24 **G** A *management company* should apply its execution policy to each *scheme* order that it executes with a view to obtaining the best possible result for the *scheme* in accordance with that policy.

11.2B.24 **G** The provisions of this section relating to execution policy are in addition to the general obligation of a *management company* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

11.2B.26 **R**

- (1) A *management company* of an *ICVC* that is a *UCITS scheme*, or an *EEA UCITS scheme* that is structured as an investment company, must obtain the prior consent of the *ICVC* or investment company to the execution policy.
- (2) In the case of a *management company* that is the *ACD* of an *ICVC* that is a *UCITS scheme*, (1) does not apply where the *ACD* is the sole director of the *ICVC*.

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

Monitoring and review of the order execution arrangements including the order execution policy

11.2B.27 **R**

- (1) A *management company* must monitor the effectiveness of its order execution arrangements and policy on a regular basis to identify and, where appropriate, correct any deficiencies.
- (2) A *management company* that places orders with other entities for execution must in particular monitor the execution quality of those entities on a regular basis to identify and, where appropriate, correct any deficiencies.

- (3) A *management company* must assess, on a regular basis:
- (a) whether the *execution venues* included in the order execution policy provide for the best possible result for the *schemes* it manages; and
 - (b) whether it needs to make changes to its execution arrangements taking into account the information published in accordance with ■ COBS 11.2A.39R, ■ COBS 11.2B.36R, ■ COBS 11.2C and the provisions referred to in ■ COBS 11.2B.30G.

[**Note:** article 25(4) first sentence, and article 26(3) first paragraph of the *UCITS implementing Directive*]

11.2B.28 **R**

A *management company* must:

- (1)
 - (a) assess whether a material change has occurred in its order execution arrangements; and
 - (b) if so, consider making changes to the *execution venues* or entities on which it places significant reliance in meeting the overarching best execution requirement; and
- (2) review its execution policy, as well as its order execution arrangements:
 - (a) at least annually; and
 - (b) whenever a material change occurs that affects the *management company's* ability to continue to obtain the best possible result for the *scheme*.

[**Note:** article 25(4) second sentence, and article 26(3) second paragraph of the *UCITS implementing Directive*]

11.2B.29 **G**

For the purposes of ■ COBS 11.2B.28R, a material change is a significant event that could impact parameters of best execution such as cost, price, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

11.2B.30 **G**

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

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

Information requirements

11.2B.31 **R**

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

[Note: articles 25(3) second sentence of the second paragraph and 26(2) second sentence of the second paragraph of the *UCITS implementing Directive*]

11.2B.32 **R** The information on the execution policy must:

- (1) be customised depending on the type of *financial instrument* and type of service provided; and
- (2) include the information in ■ COBS 11.2B.33R and ■ COBS 11.2B.35R(1) to ■ COBS 11.2B.35R(4).

11.2B.33 **R** A *management company* must make available the following details on its execution policy:

- (1) an account of the relative importance the *management company* assigns to the *execution factors*, or the process by which the *management company* determines the relative importance of the *execution factors*;
- (2) a list of the *execution venues* on which the *management company* places significant reliance in meeting its obligation to take all reasonable steps to obtain the best possible result for the execution of *scheme orders* on a consistent basis, specifying which *execution venues* are used for each type of *financial instrument* and *SFT*;
- (3) appropriate information about the *management company* and the entities chosen for execution;
- (4) a list of the factors used to select an *execution venue* which:
 - (a) includes:
 - (i) qualitative factors such as clearing schemes, circuit breakers, scheduled actions, or any other relevant consideration; and
 - (ii) the relative importance of each factor; and
 - (b) is consistent with the controls used by the *management company* to demonstrate that best execution has been achieved on a consistent basis, when reviewing the adequacy of its policy and arrangements;
- (5) how the *execution factors* of price, costs, speed, likelihood of execution and any other relevant factors are considered as part of all sufficient steps to obtain the best possible result for the *scheme*;
- (6) where applicable:
 - (a) confirmation that the *management company* executes orders outside a *trading venue*;
 - (b) the consequences of this, for example counterparty risk arising from *execution* outside a *trading venue*; and
 - (c) a statement that additional information about the consequences of this means of *execution* is available on request; and
- (7) a summary of:

- (a) the selection process for *execution venues*;
- (b) the execution strategies employed;
- (c) the procedures and process used to analyse the quality of execution obtained; and
- (d) how the *management company* monitors and verifies that the best possible results were obtained for the *schemes* it manages.

11.2B.34 **R** A *management company* must make the information in **■** COBS 11.2B.31R available to *unitholders* or potential *unitholders*:

- (1) in a *durable medium*; or
- (2) by means of a website (where that does not constitute a *durable medium*) provided that the *website conditions* are satisfied; or
- (3) in the *prospectus* of the *scheme*.

11.2B.35 **R** (1) A *management company* must make information available about the inducements that the *management company* may receive from *execution venues* in accordance with **■** COBS 2.3 and **■** COBS 18 Annex 1.

- (2) The information in (1) must at least:
 - (a) specify the fees charged by the *management company* to all counterparties involved in the transaction; and
 - (b) where the fees vary depending on the *scheme*, indicate the maximum fees or range of the fees that may be payable.
- (3) Where a *management company* applies different fees depending on the *execution venue*, a *management company* must explain these differences in sufficient detail to allow *unitholders* to understand the advantages and the disadvantages of the choice of a particular *execution venue*.
- (4) Where a *management company* charges more than one participant in a transaction, the *firm* must make information available about the value of any monetary or non-monetary benefits received by the *firm*, in compliance with **■** COBS 2.3.1R.

(5) Where a *unitholder* makes a reasonable and proportionate request to a *management company* for information about its policies or arrangements and how they are reviewed, that *management company* must answer clearly and within a reasonable time.

11.2B.36 **R** (1) Where a *management company* executes *scheme* orders or selects other *firms* to provide order execution services, it must summarise and make public, on an annual basis, for each type of *financial instrument*:

- (a) the top five *execution venues* or investment firms where it transmitted or placed orders for execution in terms of trading volumes in the preceding year; and
- (b) information on the quality of execution obtained.

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

11.2B.37 **R** Upon reasonable request from a *unitholder* or potential *unitholder*, a *management company* must provide information about entities where orders are transmitted or placed for execution.



11.2C Quality of execution

11.2C.1 **R** A *market maker* or other liquidity provider must make available the data detailed in **■** COBS 11.2C.2R to the public in the following manner:

- (1) at least on an annual basis; and
- (2) without any charges.

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

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

11.3 Client order handling

General principles

11.3.1 **R** (1) A *firm* (other than a *UCITS management company* providing *collective portfolio management services*) which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client* orders, relative to other orders or the trading interests of the *firm*.

[Note: paragraph 1 of article 28(1) of *MiFID*]

(2) These procedures or arrangements must allow for the execution of otherwise comparable orders in accordance with the time of their reception by the *firm*.

[Note: paragraph 2 of article 28(1) of *MiFID*]

(3) A *UCITS management company* providing *collective portfolio management services*, must establish and implement procedures and arrangements in respect of all *client* orders it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the *UCITS scheme* or *EEA UCITS scheme* it manages.

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

11.3.1A **R** (1) Subject to (2) and (3) in this chapter provisions marked "EU" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

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

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

11.3.2 **R** [deleted]

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

67(1) Investment firms shall satisfy the following conditions when carrying out client orders:

- (a) ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;
- (b) carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise;
- (c) inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.
- 11.3.3** **G** For the purposes of the provisions of this section, orders should not be treated as otherwise comparable if they are received by different media and it would not be practicable for them to be treated sequentially.
[Note: recital 110 to the *MiFID Org Regulation*]
- 11.3.4** **R** Where a *management company* executes the order itself in the course of providing *collective portfolio management services*, it must take all reasonable steps to ensure that any *client financial instruments* or *client funds* received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate *UCITS scheme*.
[Note: article 27(1) third paragraph of the *UCITS implementing Directive*]
- 11.3.4A** **EU** Article 67(2) of the *MiFID Org Regulation* places requirements on *firms* which are responsible for overseeing and arranging the settlement of an executed order.
67(2) Where an investment firm is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client financial instruments or client funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.
- 11.3.5** **R** [deleted]
- 11.3.5A** **EU** Article 67(3) of the *MiFID Org Regulation* sets out requirements concerning the use of information relating to pending *client orders*.
67(3) An investment firm shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.
- 11.3.6** **G** Without prejudice to the *Market Abuse Regulation*, for the purposes of the provision on the misuse of information (see ■ COBS 11.3.5AEU), any use by a *firm* of information relating to a pending *client order* in order to deal on own account in the *financial instruments* to which the *client order* relates, or in related *financial instruments*, should be considered a misuse of that information. However, the mere fact that *market makers* or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling *financial instruments*, or that persons authorised to execute orders on behalf of third parties confine

themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.

[**Note:** recital 110 to the *MiFID Org Regulation*]

Aggregation and allocation of orders

11.3.7 **R** [deleted]

11.3.7A **EU** Article 68(1) of the *MiFID Org Regulation* sets out requirements to be met where a *firm* carries out a *client* order or a transaction for own account in aggregation with another *client* order.

68(1) Investment firms shall not carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met:

(a) it is unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any client whose orders is to be aggregated;

(b) it is disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;

(c) an order allocation policy is established and effectively implemented, providing for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

11.3.7B **R** A *management company* must ensure that the order allocation policy referred to in article 68(1)(c) of the *MiFID Org Regulation*, reproduced at **■** COBS 11.3.7AEU, is in sufficiently precise terms.

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

11.3.8 **R** [deleted]

11.3.8A **EU** Article 68(2) of the *MiFID Org Regulation* sets out requirements concerning partial execution of aggregated *client* orders.

68(2) Where an investment firm aggregates an order with one or more other client orders and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

Aggregation and allocation of transactions for own account

11.3.9 **R** [deleted]

11.3.9A **EU** Article 69(1) of the *MiFID Org Regulation* sets out requirements concerning aggregated transactions.

69(1) Investment firms which have aggregated transactions for own account with one or more client orders shall not allocate the related trades in a way that is detrimental to a client.

- 11.3.10 **R** [deleted]
- 11.3.10A **EU** Article 69(2) of the *MiFID Org Regulation* sets out allocation priorities where a *firm* aggregates a *client* order in accordance with its allocation policy referred to in article 68(1)(c) (see ■ COBS 11.3.7AEU).
- 69 (2) Where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to the firm.
- Where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to the firm. Where an investment firm is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in Article 68(1)(c).
- 11.3.11 **R** [deleted]
- 11.3.11A **EU** Article 69(3) of the *MiFID Org Regulation* introduces requirements for order allocation policy, referred to in article 68(1)(c) (see ■ COBS 11.3.7AEU), where transactions for own account are executed in combination with *client* orders.
- 69(3)As part of the order allocation policy referred to in Article 68(1)(c), investment firms shall put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.
- 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 109
to the *MiFID Org Regulation*]
- 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.

Transposition of client order handling provisions in the UCITS Implementing Directive

11.3.14

G

- (1) This section applies to a *UCITS management company* as a result of ■ COBS 18.5B.2R.
- (2) The provisions of the *MiFID Org Regulation* reproduced in this section apply to a *UCITS management company* as a result of ■ COBS 11.3.1AR.
- (3) Some of these provisions have been used to transpose provisions of the *UCITS implementing Directive*, as set out in the table below:

| MiFID Org Regulation Provision | COBS 11.3 provision | UCITS implementing Directive transposition |
|--------------------------------|--|--|
| article 67(1) | COBS 11.3.2AEU | article 27(1) second paragraph |
| article 67(3) | COBS 11.3.5AEU | article 27(2) |
| article 68(1) | COBS 11.3.7AEU, as modified by COBS 11.3.7BR | article 28(1) |
| article 68(2) | COBS 11.3.8AEU | article 28(2) |
| article 69(1) | COBS 11.3.9AEU | article 28(3) |
| article 69(2) | COBS 11.3.10AEU | article 28(4) |

11.4 Client limit orders

Obligation to make unexecuted client limit orders public

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

11.4.1 **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* or traded on a *trading venue* which is not immediately executed under prevailing market conditions, take measures to facilitate the earliest possible execution of that order by making public immediately that *client limit order* in a manner which is easily accessible to other market participants.

[Note: article 28(2) of *MiFID*]

11.4.2 **G** In respect of transactions executed between *eligible counterparties*, the obligation to disclose *client limit orders* should only apply where the counterparty is explicitly sending a *limit order* to a *firm* for its execution.

[Note: recital 105 to *MiFID*]

How client limit orders may be made public

11.4.3 **EU** [deleted]

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

70(1)A *client limit order* in respect of shares admitted to trading on a regulated market or traded on a trading venue which have not been immediately executed under prevailing market condition as referred to in Article 28(2) of Directive 2014/65/EU shall be considered available to the public when the investment firm has submitted the order for execution to a regulated market or a MTF or the order has been published by a data reporting services provider located in one Member State and can be easily executed as soon as market conditions allow.

11.4.4 **G** [deleted]

11.4.4A **G** Firms may comply with the obligations in ■ COBS 11.4.1R, to make public unexecuted *client limit orders*, by transmitting the *client* limit order to a *trading venue*.

[Note: article 28(2) of MiFID]

Orders that are large in scale

11.4.5 **R** The obligation in ■ COBS 11.4.1R to make public a *limit order* is disapplied in respect of transactions that are large in scale compared with normal market as determined under article 4 of MiFIR.

[Note: article 28(2) of MiFID]

11.4.6 **G** [deleted]

11.5A Record keeping: client orders and transactions

- 11.5A.1** **R** (1) Subject to (2), in this chapter provisions marked "EU" apply to a *firm's* business other than *MiFID business* as if they were *rules*.
- (2) Provisions in this chapter which are marked "EU" do not apply to *corporate finance business* carried on by a *firm* which is not a *MiFID investment firm*.
- 11.5A.2** **EU** Article 74 of the *MiFID Org Regulation*, together with Section 1 of Annex IV to that Regulation which is reproduced at **COBS 11.5A.4EU**, makes provision for record keeping of initial orders from *clients*.
- 74 An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV [reproduced below at COBS 11.5A.4EU] to this Regulation to the extent they are applicable to the order or decision to deal in question.
- Where the details set out in Section 1 of Annex IV to this Regulation are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, these details should be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014.
- 11.5A.3** **EU** Article 75 of the *MiFID Org Regulation*, together with Section 2 of Annex IV to that Regulation which is reproduced at **COBS 11.5A.5EU**, makes provision for record keeping in relation to transactions and order processing.
- 75 Investment firms shall, immediately after receiving a client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the competent authority at least the details set out in Section 2 of Annex IV [reproduced below at COBS 11.5A.5EU].
- Where the details set out in Section 2 of Annex IV are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, they shall be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.
- 11.5A.4** **EU** Annex IV Section 1 of the *MiFID Org Regulation* makes provision for record keeping of *client* orders and decisions to deal.
- 1.Name and designation of the client

- 2.Name and designation of any relevant person acting on behalf of the client
- 3.A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision
- 4.A designation to identify the algorithm (Algo ID) responsible within the investment firm for the investment decision;
- 5.B/S indicator;
- 6.Instrument identification
- 7.Unit price and price notation
- 8.Price
- 9.Price multiplier
- 10.Currency 1
- 11.Currency 2
- 12.Initial quantity and quantity notation
- 13.Validity period
- 14.Type of the order
- 15.Any other details, conditions and particular instructions from the client
- 16.The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) Directive 2014/65/EU.

11.5A.5 EU

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

- 1.Name and designation of the client
- 2.Name and designation of any relevant person acting on behalf of the client
- 3.A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision
- 4.A designation to identify the Algo (Ago ID) responsible within the investment firm for the investment decision
- 5.Transaction reference number
- 6.A designation to identify the order (Order ID)
- 7.The identification code of the order assigned by the trading venue upon receipt of the order
- 8.A unique identification for each group of aggregated clients' orders (which will be subsequently placed as one block order on a given trading venue). This identification should indicated "aggregated_X" with X representing the number of clients whose orders have been aggregated
- 9.The segment MIC code of the trading venue to which the order has been submitted
- 10.The name and other designation of the person to whom the order was transmitted
- 11.Designation to identify the Seller & the Buyer

- 12.The trading capacity
- 13.A designation to identify the Trader (Trader ID) responsible for the execution
- 14.A designation to identify the Algo (Algo ID) responsible for the execution
- 15.B/S indicator;
- 16.Instrument identification
- 17.Ultimate underlying
- 18.Put/Call identifier
- 19.Strike price
- 20.Upfront payment
- 21.Delivery type
- 22.Option style
- 23.Maturity date
- 24.Unit price and price notation
- 25.Price
- 26.Price multiplier
- 27.Currency 1
- 28.Currency 2
- 29.Remaining quantity
- 30.Modified quantity
- 31.Executed quantity
- 32.The date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU.
- 33.The date and exact time of any message that is transmitted to and received from the trading venue in relation to any events affecting an order. The exact time must be measured according to the methodology prescribed under the RTS on clock synchronisation.
- 34.The date and exact time any message that is transmitted to and received from another investment firm in relation to any events affecting an order. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU.
- 35.Any message that is transmitted to and received from the trading venue in relation to orders placed by the investment firm
- 36.Any other details and conditions that was submitted to and received from another investment firm in relation with the order
- 37.Each placed order's sequences in order to reflect the chronology of every event affecting it, including but not limited to modifications, cancellations and execution
- 38.Short selling flag
- 39.SSR exemption flag
- 40.Waiver flag

11.7 Personal account dealing

Application

- 11.7.-1 **R** This section does not apply to a *firm* in relation to *MiFID*, *equivalent third country* or *optional exemption business* (but see **■** COBS 11.7A (Personal account dealing relating to MiFID, equivalent third country or optional exemption business)).

Rule on personal account dealing

- 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 or her on behalf of the *firm*:
- (1) entering into a *personal transaction* which meets at least one of the following criteria:
 - (a) that *person* is prohibited from entering into it under the *Market Abuse Regulation*;
 - (b) it involves the misuse or improper disclosure of that confidential information;
 - (c) it conflicts or is likely to conflict with an obligation of the *firm* to a *customer* under the *regulatory system* or any other obligation of the *firm* under *MiFID* or the *UCITS Directive*;
 - (2) advising or procuring, other than in the proper course of his employment or contract for services, any other *person* to enter into a transaction in *designated investments* which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;
 - (3) disclosing, other than in the normal course of his or her employment or contract for services, any information or opinion to any other *person* if the *relevant person* knows, or reasonably ought to know, that as a result of that disclosure that other *person* will or would be likely to take either of the following steps:
 - (a) to enter into a transaction in *designated investments* which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;

- (b) to advise or procure another *person* to enter into such a transaction.

[Note: article 13(1) of the *UCITS implementing Directive*]

11.7.2 **R** For the purposes of this section, the relevant provisions are:

- (1) the *rules* article 37(2)(a) and (b) of the *MiFID Org Regulation on personal transactions* undertaken by *financial analysts* copied out in ■ COBS 12.2.21EU which apply as *rules* as a result of ■ COBS 12.2.15R;
- (2) article 67(3) of the *MiFID Org Regulation* on the misuse of information relating to pending *client* orders copied out in ■ COBS 11.3.5AEU which applies as a *rule* as a result of ■ COBS 11.3.1AR.

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 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 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.

11.7A Personal account dealing relating to MiFID, equivalent third country or optional exemption business

Application

- 11.7A.1 **R** This chapter applies to a *firm* in relation to its *MiFID, equivalent third country or optional exemption business*.
- 11.7A.2 **R**
- (1) Subject to (2), in this chapter provisions marked "EU" apply to a *firm* in relation to its *equivalent third country or optional exemption business* as if they were *rules*.
 - (2) In this chapter, provisions marked "EU" which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to a *firm* in relation to its business which is the *equivalent business of a third country investment firm or MiFID optional exemption business* as *guidance*.
- 11.7A.3 **R** A *firm* that conducts *designated investment business* must establish appropriate rules governing personal transactions undertaken by managers, employees and *tied agents*.
- [Note: article 16(2) of *MiFID*]

Scope of personal transactions

- 11.7A.4 **EU** EU Article 28 of the *MiFID Org Regulation* sets out the scope of personal transactions.
- 28 For the purposes of Article 29 and Article 37, a personal transaction shall be a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met:
- (a) the relevant person is acting outside the scope of the activities he carries out in this professional capacity;
 - (b) the trade is carried out for the account of any of the following persons:
 - (i) the relevant person;
 - (ii) any person with whom he has a family relationship, or with whom he has close links;
 - (iii) a person in respect of whom the relevant person has a direct or indirect material interest in the outcome of the trade, other than obtaining a fee or commission for the execution of the trade.

11.7A.5 EU Article 29 of the *MiFID Org Regulation* sets out detailed provision concerning personal transactions.

29(1) Investment firms shall ensure that relevant persons do establish, implement and maintain adequate arrangements aimed at preventing the activities set out in paragraphs 2, 3 and 4 in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 7(1) of Regulation (EU) No 596/2014 or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the firm.

(2) Investment firms shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:

(a) that person is prohibited from entering into it under Regulation (EU) No 596/2014;

(b) it involves the misuse or improper disclosure of that confidential information;

(c) it conflicts or is likely to conflict with an obligation of the investment firm under Directive 2014/65/EU.

(3) Investment firms shall ensure that relevant persons do not advise or recommend, other than in the proper course of employment or contract for services, any other person to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraph 2 or Article 37(2)(a) or (b) or Article 67(3);

(4) Without prejudice to Article 10 (1) of Regulation (EU) No 596/2014, investment firms shall ensure that relevant persons do not disclose, other than in the normal course of his employment or contract for services, any information or opinion to any other person where the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

(a) to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraphs 2 or 3 or Article 37(2)(a) or (b) or Article 67(3);

(b) to advise or procure another person to enter into such a transaction.

(5) The arrangements required under paragraph 1 shall be designed to ensure that:

(a) each relevant person covered by paragraphs 1, 2, 3 and 4 is aware of the restrictions on personal transactions, and of the measures established by the investment firm in connection with personal transactions and disclosure, in accordance with paragraphs 1, 2, 3 and 4;

(b) the firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the firm to identify such transactions;

(c) a record is kept of the personal transaction notified to the firm of identified by it, including any authorisation or prohibition in connection with such a transaction.

In the case of outsourcing arrangements, the investment firm shall ensure that the firm to which the activity is outsourced maintains a record of personal transactions entered into by any relevant person and provides that information to the investment firm promptly on request.

(6) Paragraphs 1 to 5 shall not apply to the following personal transactions:

(a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

(b) personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

11.7A.6

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- (1) Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this section do not apply:
- (a) separately to each successive transaction if those instructions remain in force and unchanged; or
 - (b) to the termination or withdrawal of such instructions, provided that any *financial instruments* which had previously been acquired pursuant to the instructions are not disposed of at the same time as the instructions terminate or are withdrawn.
- (2) Obligations under this section do apply in relation to a *personal transaction*, or the commencement of successive *personal transactions*, that are carried out on behalf of the same *person* if those instructions are changed or if new instructions are issued.

[Note: recital 42 to the *MiFID Org Regulation*]

Regulatory Technical Standard 28 (RTS 28)

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

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2004/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p.349), and in particular point (b) of the first subparagraph of Article 27(10),

Whereas:

- (1) It is essential to enable the public and investors to evaluate the quality of an investment firm's execution practices and to identify the top five execution venues in terms of trading volumes where investment firms executed client orders in the preceding year. In order to make meaningful comparisons and analyse the choice of top five execution venues it is necessary that information is published by investment firms specifically in respect of each class of financial instruments. In order to be able to fully evaluate the order flow of client orders to execution venues, investors and the public should be able to clearly identify if the investment firm itself was one of the top five execution venues for each class of financial instrument.
- (2) In order to fully assess the extent of the quality of execution being obtained on execution venues used by investment firms to execute client orders, including execution venues in third countries, it is appropriate that investment firms publish information required under this Regulation in relation to trading venues, market makers or other liquidity providers or any entity that performs a similar function in a third country to the functions performed by any of the foregoing.
- (3) In order to provide precise and comparable information, it is necessary to set out classes of financial instruments based on their characteristics relevant for publication purposes. A class of financial instruments should be narrow enough to reveal differences in order execution behaviour between classes but at the same time broad enough to ensure that the reporting obligation on investment firms is proportionate. Given the breadth of the equity class of financial instruments, it is appropriate to divide this class into subclasses based on liquidity. As liquidity is an essential factor governing execution behaviours and as execution venues are often competing to attract flows of the most frequently traded stocks, it is appropriate that equity instruments are classified according to their liquidity as determined under the tick size regime as set out in Directive 2014/65/EU of the European Parliament and the Council.
- (4) When publishing the identity of the top five execution venues on which they execute client orders it is appropriate for investment firms to publish information on the volume and number of orders executed on each execution venue, so that investors may be able to form an opinion as to the flow of client orders from the firm to execution venue. Where, for one or several classes of financial instruments, an investment firm only executes a very small number of orders, information on the top five execution venues would not be very meaningful nor representative of order execution arrangements. It is therefore appropriate to require investment firms to clearly indicate the classes of financial instruments for which they execute a very small number of orders.
- (5) To prevent potentially market sensitive disclosures on the volume of business being conducted by the investment firm, the volume of execution and the number of executed orders should be expressed as a percentage of the investment firm's total execution volumes and total number of executed orders in that class of financial instrument, respectively, rather than as absolute values.

(6) It is appropriate to require investment firms to publish information which is relevant to their order execution behaviour. To ensure that investment firms are not held accountable for order execution decisions for which they are not responsible, it is appropriate for investment firms to disclose the percentage of orders executed on each of the top five execution venues where the choice of execution venue has been specified by clients.

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

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

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

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

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

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

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

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

(15) Investment firms should not be prevented from adopting an additional level of reporting which is more granular, provided that in such case the additional report complements and does not replace what is required under this Regulation.

(16) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

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

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

HAS ADOPTED THIS REGULATION

Article 1 Subject matter

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

Article 2 Definitions

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

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

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

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

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

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

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

- (a) an explanation of the relative importance the firm gave to the execution factors of price, costs, speed, likelihood of execution or any other consideration including qualitative factors when assessing the quality of execution;
- (b) a description of any close links, conflicts of interests, and common ownerships with respect to any execution venues used to execute orders;
- (c) a description of any specific arrangements with any execution venues regarding payments made or received, discounts, rebates or non-monetary benefits received;
- (d) an explanation of the factors that led to a change in the list of execution venues listed in the firm's execution policy, if such a change occurred;
- (e) an explanation of how order execution differs according to client categorisation, where the firm treats categories of clients differently and where it may affect the order execution arrangements;
- (f) an explanation of whether other criteria were given precedence over immediate price and cost when executing retail client orders and how these other criteria were instrumental in delivering the best possible result in terms of the total consideration to the client;
- (g) an explanation of how the investment firm has used any data or tools relating to the quality of execution, including any data published under Commission Delegated Regulation (EU) 2017/575;
- (h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider established under Article 65 of Directive 2014/65/EU.

Article 4 Format

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

Article 5 Entry into force and application

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

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

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

Done at Brussels, 8.6.2016

For the Commission

The President Jean-Claude JUNCKER

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

ANNEXES

Annex I: Classes of financial instruments

- (a) Equities – Shares & Depositary Receipts
 - (i) Tick size liquidity bands 5 and 6 (from 2000 trades per day)
 - (ii) Tick size liquidity bands 3 and 4 (from 80 to 1999 trades per day)
 - (iii) Tick size liquidity band 1 and 2 (from 0 to 79 trades per day)
- (b) Debt instruments
 - (i) Bonds

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

Annex II

Table 1

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

Name and Venue Identifier (MIC or LEI)
 Name and Venue Identifier (MIC or LEI)
 Name and Venue Identifier (MIC or LEI)
 Name and Venue Identifier (MIC or LEI)

Table 2

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

Table 3

| | | |
|---|--|---|
| Class of Instrument | | |
| Notification if < 1 average trade per business day in the previous year | | Yes/No |
| Top 5 Venues ranked in terms of volume (descending order) | Proportion of volume executed as a percentage of total in that class | Proportion of orders executed as percentage of total in that class. |
| Name and Venue Identifier (MIC or LEI) | | |
| Name and Venue Identifier (MIC or LEI) | | |

Name and Venue Identifier (MIC or LEI)

Name and Venue Identifier (MIC or LEI)

Name and Venue Identifier (MIC or LEI)

