

Chapter 11

Dealing and managing

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*]

11.2A.8 EU

Best execution criteria

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 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.

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*]