

Chapter 11

Dealing and managing

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.