

Chapter 11

Dealing and managing

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

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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

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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.