

## Chapter 11

# Dealing and managing

## 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*]