

Chapter 14

Providing product information to clients

14.3 Information about designated investments (non-MiFID provisions)

Application

14.3.1

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This section applies to a *firm* in relation to:

- (1) [deleted]
- (2) any of the following *regulated activities* when carried on for a *retail client*:
 - (a) making a *personal recommendation* about a *designated investment*; or
 - (b) *managing investments* that are *designated investments* (other than a *P2P agreement*); or
 - (c) *arranging* (bringing about) or *executing a deal* in a *warrant, non-readily realisable security speculative illiquid security, or derivative*; or
 - (d) engaging in *stock lending activity*; or
 - (e) *operating an electronic system in relation to lending*, but only in relation to facilitating a person becoming a lender under a *P2P agreement*.

except to the extent that the carrying on of such a *regulated activity* constitutes *MiFID, equivalent third country or optional exemption business*.

- (3) Where a *rule* in this chapter applies to a *firm* which is *arranging* (bringing about) or *executing a deal* in a *speculative illiquid security*, the *rule* also applies to:
 - (a) a *TP firm* (to the extent that the *rule* does not already apply to such a *TP firm* as a result of ■ GEN 2.2.26R); and
 - (b) a Gibraltar-based firm (having the same meaning as in the *Gibraltar Order*) to the extent that the *rule* does not already apply to such a Gibraltar-based firm as a result of ■ GEN 2.3.1R).

14.3.1A

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A *firm* carrying on *MiFID, equivalent third country or optional exemption business* should consider whether the requirements in articles 46 and 48 of the *MiFID Org Regulation* apply; see ■ COBS 14.3A (Information about financial instruments (MiFID provisions)).

Providing a description of the nature and risks of designated investments

14.3.2

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A firm must provide a client with a general description of the nature and risks of designated investments, taking into account, in particular, the client's categorisation as a retail client or a professional client. That description must:

- (1) explain the nature of the specific type of designated investment concerned, as well as the risks particular to that specific type of designated investment, in sufficient detail to enable the client to take investment decisions on an informed basis; and
- (2) include, where relevant to the specific type of designated investment concerned and the status and level of knowledge of the client, the following elements:
 - (a) the risks associated with that type of designated investment including an explanation of leverage and its effects and the risk of losing the entire investment;
 - (b) the volatility of the price of designated investments and any limitations on the available market for such investments;
 - (c) the fact that an investor might assume, as a result of transactions in such designated investments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the designated investments; and
 - (d) any margin requirements or similar obligations, applicable to designated investments of that type.

14.3.3

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If a firm provides a retail client with information about a designated investment that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the Prospectus Regulation, that firm must inform the retail client where that prospectus is made available to the public.

14.3.4

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Where the risks associated with a designated investment composed of two or more different designated investments or services are likely to be greater than the risks associated with any of the components, a firm must provide an adequate description of the components of that designated investment and the way in which its interaction increases the risks.

14.3.5

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In the case of a designated investment that incorporates a guarantee by a third party, the information about the guarantee must include sufficient detail about the guarantor and the guarantee to enable the retail client to make a fair assessment of the guarantee.

Satisfying the provision rules

14.3.6

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[deleted]

14.3.7 G Providing a *key features document*, *key investor information document*, *EEA key investor information document* or *NURS-KII document* may satisfy the requirements of the *rules* in this section.

Firms advising on P2P agreements

14.3.7A G Examples of information a *firm advising on P2P agreements or P2P portfolios* should provide to explain the specific nature and risks of a *P2P agreement* or a *P2P portfolio* include:

- (1) expected and actual default rates in line with the requirements in ■ COBS 4.6 on past and future performance;
- (2) a summary of the assumptions used in determining expected future default rates;
- (3) a description of how loan risk is assessed, including a description of the criteria that must be met by the borrower before the *operator of the electronic system in relation to lending* considers the borrower eligible for a *P2P agreement*;
- (4) where lenders have the choice to invest in specific *P2P agreements*, details of the creditworthiness assessment of the borrower carried out;
- (5) whether the *P2P agreement* benefits from any security and if so, what;
- (6) a fair description of the likely actual return, taking into account fees, default rates and taxation;
- (7) an explanation of how any tax liability for lenders arising from investment in *P2P agreements* would be calculated;
- (8) an explanation of the *operator of the electronic system in relation to lending's* procedure for dealing with a loan in late payment or default;
- (9) the procedure for a lender to access their money before the term of the *P2P agreement* has expired; and
- (10) an explanation of what would happen if the *operator of the electronic system in relation to lending* fails, including confirmation that there is no recourse to the Financial Services Compensation Scheme.

14.3.7B G When complying with the information requirements set out in this chapter and other parts of the *FCA Handbook*, *firms* advising on a *P2P agreement* or a *P2P portfolio* may also wish to consider providing to *retail clients* any other information that an *operator of an electronic system in relation to lending* must disclose in accordance with ■ COBS 18.12.

14.3.7C G *Firms* providing information to *clients*, and communicating information, about an *innovative finance ISA* should also have regard to the *guidance* in ■ COBS 4.5.9G.

Product information: form

14.3.8 **R** The *documents* and information provided in accordance with the *rules* in this section must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

The timing rules

14.3.9 **R**

- (1) The information to be provided in accordance with the *rules* in this section must be provided in good time before a *firm* carries on *designated investment business* with or for a *retail client*.
- (2) A *firm* may provide that information immediately after it begins to carry on that business if:
 - (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from complying with that *rule*; and
 - (b) in any case where the *rule* on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the *firm* complies with that *rule* as if the *client* was a *consumer*.

Keeping the client up-to-date

14.3.10 **R** A *firm* must notify a *client* in good time about any material change to the information provided under the *rules* in this section which is relevant to a service that the *firm* is providing to that *client*. That notification must be given in a *durable medium* if the information to which it relates is given in a *durable medium*.

Information about UCITS schemes

14.3.11 **R** If a *firm* provides a *client* with a *key investor information document* or *EEA key investor information document* that meets all of the requirements applying in relation to that *document*, it will have provided appropriate information for the purpose of the requirement to disclose information on:

- (1) *designated investments* and investment strategies (■ COBS 2.2.1R (1)(b)); and
- (2) costs and associated charges (■ COBS 2.2.1R (1)(d) and ■ COBS 6.1.9 R;

in relation to the costs and associated charges in respect of the *UCITS scheme* itself, including the exit and entry commissions.

Information about KII-compliant NURS

14.3.11A **R** If a *firm* provides a *client* with a *NURS-KII document* it will have provided appropriate information for the requirement to disclose information on:

- (1) *designated investments* and investment strategies (■ COBS 2.2.1R(1)(b)); and

(2) costs and associated charges (■ COBS 2.2.1R(1)(d) and ■ COBS 6.1.9R);

in relation to the costs and associated charges for the *KII-compliant NURS* itself, including the exit and entry commissions.

Distributor disclosure requirements for UCITS or KII-compliant NURS

14.3.12

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A *key investor information document* and *EEA key investor information document* or a *NURS-KII document* provide sufficient information in relation to the costs and associated charges in respect of the *UCITS* or *KII-compliant NURS* itself. However, a *firm* distributing *units* in a *UCITS* or *KII-compliant NURS* should also inform a *client* about all of the other costs and associated charges related to the provision of its services in relation to *units* in the *UCITS* or *KII-compliant NURS*.