

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	<div><div>R</div><div><p>A <i>firm</i> must provide a <i>client</i> with a general description of the nature and risks of <i>designated investments</i>, taking into account, in particular, the <i>client's</i> categorisation as a <i>retail client</i> or a <i>professional client</i>. That description must:</p><div><div>(1)</div><div>explain the nature of the specific type of <i>designated investment</i> concerned, as well as the risks particular to that specific type of <i>designated investment</i>, in sufficient detail to enable the <i>client</i> to take investment decisions on an informed basis; and</div></div><div><div>(2)</div><div>include, where relevant to the specific type of <i>designated investment</i> concerned and the status and level of knowledge of the <i>client</i>, the following elements:</div><div><div>(a)</div><div>the risks associated with that type of <i>designated investment</i> including an explanation of leverage and its effects and the risk of losing the entire investment;</div><div><div>(b)</div><div>the volatility of the price of <i>designated investments</i> and any limitations on the available market for such investments;</div><div><div>(c)</div><div>the fact that an investor might assume, as a result of transactions in such <i>designated investments</i>, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the <i>designated investments</i>; and</div><div><div>(d)</div><div>any margin requirements or similar obligations, applicable to <i>designated investments</i> of that type.</div></div></div></div></div></div></div></div>
14.3.3	<div><div>R</div><div><p>If a <i>firm</i> provides a <i>retail client</i> with information about a <i>designated investment</i> 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 <i>Prospectus Regulation</i>, that <i>firm</i> must inform the <i>retail client</i> where that prospectus is made available to the public.</p></div></div>
14.3.4	<div><div>R</div><div><p>Where the risks associated with a <i>designated investment</i> composed of two or more different <i>designated investments</i> or services are likely to be greater than the risks associated with any of the components, a <i>firm</i> must provide an adequate description of the components of that <i>designated investment</i> and the way in which its interaction increases the risks.</p></div></div>
14.3.5	<div><div>R</div><div><p>In the case of a <i>designated investment</i> 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 <i>retail client</i> to make a fair assessment of the guarantee.</p></div></div>
Satisfying the provision rules	
14.3.6	<div><div>G</div><div><p>[deleted]</p></div></div>

- 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 <i>documents</i> and information provided in accordance with the <i>rules</i> in this section must be in a <i>durable medium</i> or available on a website (where that does not constitute a <i>durable medium</i>) that meets the <i>website conditions</i> .
		The timing rules
14.3.9	R	<p>(1) The information to be provided in accordance with the <i>rules</i> in this section must be provided in good time before a <i>firm</i> carries on <i>designated investment business</i> with or for a <i>retail client</i>.</p> <p>(2) A <i>firm</i> may provide that information immediately after it begins to carry on that business if:</p> <p>(a) the <i>firm</i> was unable to comply with (1) because, at the request of the <i>client</i>, the agreement was concluded using a means of distance communication which prevented the <i>firm</i> from complying with that <i>rule</i>; and</p> <p>(b) in any case where the <i>rule</i> on voice telephony communications (■ COBS 5.1.12 R) does not otherwise apply, the <i>firm</i> complies with that <i>rule</i> as if the <i>client</i> was a <i>consumer</i>.</p>
		Keeping the client up-to-date
14.3.10	R	A <i>firm</i> must notify a <i>client</i> in good time about any material change to the information provided under the <i>rules</i> in this section which is relevant to a service that the <i>firm</i> is providing to that <i>client</i> . That notification must be given in a <i>durable medium</i> if the information to which it relates is given in a <i>durable medium</i> .
		Information about UCITS schemes
14.3.11	R	<p>If a <i>firm</i> provides a <i>client</i> with a <i>key investor information document</i> or <i>EEA key investor information document</i> that meets all of the requirements applying in relation to that <i>document</i>, it will have provided appropriate information for the purpose of the requirement to disclose information on:</p> <p>(1) <i>designated investments</i> and investment strategies (■ COBS 2.2.1R (1)(b)); and</p> <p>(2) costs and associated charges (■ COBS 2.2.1R (1)(d) and ■ COBS 6.1.9 R;</p> <p>in relation to the costs and associated charges in respect of the <i>UCITS scheme</i> itself, including the exit and entry commissions.</p>
		Information about KII-compliant NURS
14.3.11A	R	<p>If a <i>firm</i> provides a <i>client</i> with a <i>NURS-KII document</i> it will have provided appropriate information for the requirement to disclose information on:</p> <p>(1) <i>designated investments</i> and investment strategies (■ COBS 2.2.1R(1)(b)); and</p>

(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*.