

## Chapter 18

# Specialist Regimes

18.2

Energy market activity and oil market activity

18.2.1

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Energy market activity and oil market activity - MiFID business

The provisions of COBS in the table do not apply in relation to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
6.1A	Adviser charging and remuneration
6.1B	Retail investment product provider requirements relating to adviser charging and remuneration
COBS 6.2B	Describing advice services
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
16.3.9	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts - communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

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The provisions of COBS in the table are unlikely to be relevant to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
5	Distance communications
7	Insurance distribution
13	Preparing product information
14.2	Providing product information to clients
15	Cancellation
17	Claims handling for long-term care insurance

COBS	Description
18.1	Trustee firms' regime
18.3	Corporate finance business
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

Energy market activity and oil market activity - non-MiFID business

18.2.3

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Only the COBS provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not:

- (1) *MiFID* or equivalent third country business; or
- (2) *energy market activity* or *oil market activity* set out in ■ COBS 18.2.4 R.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, but only in relation to <i>communicating</i> or <i>approving a financial promotion</i>
5.2	E-commerce
12	Investment research and non-independent research
16.2	Occasional reporting

Energy market activity and oil market activity - dealings with or through authorised persons

18.2.4

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Only the COBS provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not *MiFID* or equivalent third country business but which, if the *firm* were not *authorised*, would not be a *regulated activity* because of article 16 of the *Regulated Activities Order* (Dealing in contractually based investments) or article 22 of the *Regulated Activities Order* (Deals with or through authorised persons etc.).

COBS	Description
1	Application
2.4	Agent as client and reliance on others
4.12	Unregulated collective investment schemes
5.2	E-commerce

		<b>Other non-MiFID business related to commodity or exotic derivative instruments</b>
18.2.5	R	<p>COBS applies as set out in the table to <i>firms</i> in respect of activities referred to in the <i>general application rule</i> related to:</p> <p>(1) <i>commodity futures</i>; or</p> <p>(2) <i>commodity options</i>; or</p> <p>(3) <i>contracts for differences</i> related to an underlying <i>commodity</i>; or</p> <p>(4) other <i>futures</i> or <i>contracts for differences</i> which are not related to <i>commodities</i>, financial instruments or cash;</p> <p>which is not <i>MiFID</i> or <i>equivalent third country business</i> and <i>energy market activity</i> or <i>oil market activity</i>.</p> <div><b>Application of COBS to other non-MiFID business related to commodity derivative instruments</b></div> <div>All of COBS applies, except COBS 18.2.6 R to COBS 18.2.9 E applies instead of COBS 11.2 (Best execution)</div>
		<b>Best execution for other non-MiFID business related to commodity and exotic derivative instruments</b>
18.2.6	R	<p>A <i>firm</i> that executes a <i>customer order</i> in the course of carrying out activities referred to in ■ COBS 18.2.5 R must provide best execution.</p>
		<b>Exceptions to best execution</b>
18.2.7	R	<p>The duty to provide best execution does not apply where:</p> <p>(1) the <i>firm</i> has agreed with a <i>professional client</i> that it does not owe a duty of best execution to him; or</p> <p>(2) the <i>firm</i> relies on another <i>person</i> to whom it passes a <i>customer order</i> for execution to provide best execution, but only if it has taken reasonable care to ensure that he will do so.</p>
		<b>Providing best execution</b>
18.2.8	R	<p>To provide best execution, a <i>firm</i> must:</p> <p>(1) take reasonable care to ascertain the price which is the best available for the <i>customer order</i> in the relevant market at the time for transactions of the kind and size concerned; and</p> <p>(2) execute the <i>customer order</i> at a price which is no less advantageous to the <i>customer</i>, unless the <i>firm</i> has taken reasonable steps to ensure that it would be in the <i>customer's</i> best interests not to do so.</p>
18.2.9	E	<p>(1) In order to take reasonable care to ascertain the price which is the best available, a <i>firm</i>:</p>

- (a) should disregard any *charges* and *commission* made by it or its agents that are disclosed to the *customer* under ■ COBS 6.1.9 R (Information about costs and associated charges);
  - (b) need not have access to competing exchanges, or to all, or a minimum number of, available price sources; but if a *firm* can access prices displayed by different exchanges and trading platforms and make a direct and immediate comparison, it should *execute* the *customer order* at the best price available to the firm on such exchanges or trading platforms, if this is in the best interests of the *customer*;
  - (c) should pass on to the *customer* the price at which it *executes* the transaction to meet the *customer order*; and
  - (d) should not take a *mark-up* or *mark-down* from the price at which it *executes* the *customer order*.
- (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))
- (3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see ■ COBS 18.2.8 R (1))