

## Chapter 18

# Specialist Regimes

## 18.8A OPS firms

### Application

- 18.8A.1** **R** This section applies to an *OPS firm* when it carries on *OPS activity*:
- (1) from an establishment maintained by it in the *United Kingdom*; and
  - (2) which is not *MiFID*, *equivalent third country* or *optional exemption business*.

### Interpretation and general modifications

- 18.8A.2** **R** Where a *COBS rule* specified in this section applies to an *OPS firm*, the following modifications apply:
- (1) a reference to:
    - (a) "*client*" is to be construed as a reference to the *occupational pension scheme* or *welfare trust*, as the case may be, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of whom the relevant business is to be carried on; and
    - (b) "*investment firm*" is to be construed as a reference to an *OPS firm*;
  - (2) if an *OPS firm* is required by a *COBS rule* specified in this section to provide information to, or obtain consent from, a *client*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *occupational pension scheme* or *welfare trust* for whom that *firm* is acting; and
  - (3) subject to the modifications in **■ COBS 18.8A.6 R**, **■ COBS 18.8A.15R(4)** and **■ COBS 18.8A.16R(4)**, **■ COBS 1.2.3R** (References in *COBS* to the *MiFID Org Regulation*) applies where a *COBS* provision marked "EU" applies to an *OPS firm*.

### General rule

- 18.8A.3** **R** Except as specified in this section, the provisions of *COBS* do not apply to an *OPS firm* in relation to its *OPS activity*.

### Client categorisation

- 18.8A.4** **R** **■ COBS 3** (Client categorisation) applies to an *OPS firm* but only for the purpose of determining the *client* categorisation of an *occupational pension scheme* or *welfare trust*.

### Inducements in relation to OPS activity that is advising on investments in relation to a financial instrument or providing portfolio management services

18.8A.5 **R** The COBS provisions in Table 1 apply:

- (1) to an *OPS firm* when it carries on *OPS activity* which is:
  - (a) *advising on investments* in relation to a *financial instrument*; or
  - (b) providing *portfolio management services*; and
- (2) as modified by **COBS 18.8A.6R**.

Table 1	
COBS	Description
2.1.1R	The client's best interests rule.
2.3A.16R except (1)	Inducements relating to the provision of independent advice and portfolio management services to retail clients outside the United Kingdom or to professional clients.
2.3A.18G	Guidance relating to fees, commission, and non-monetary benefits paid or provided by a person on behalf of a client.
2.3A.19R	Acceptable minor non-monetary benefits.
2.3A.20G	Guidance about determining whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service provided to the client.
2.3A.21G	Guidance about when a non-monetary benefit might impair compliance with the duty to act in the client's best interest.
2.3A.22G	Guidance relating to acceptable minor non-monetary benefits.
2.3A.30G	Guidance on inducements.
2.3A.31G	Guidance on inducements.

### Modification of inducement rules specified in Table 1

18.8A.6 **R** Where a provision of COBS specified in Table 1 applies, a reference to "*investment service*" is to be construed as a reference to the relevant *OPS activity* falling within the scope of **COBS 18.8A.5R**.

### Inducements in relation to OPS activity not within the scope of COBS 18.8A.5R

18.8A.7 **R** The COBS provisions in Table 2 apply:

- (1) to an *OPS firm* when it carries on any *OPS activity* other than that to which **COBS 18.8A.5R** applies; and

(2) as modified by ■ COBS 18.8A.8R.

Table 2	
COBS	Description
2.1.1R	The client's best interests rule
2.3.1R, other than (2)(b)(i) to (iii)	Rule on inducements
2.3.2R	Disclosure obligation

### Modification of inducement rules specified in Table 2

18.8A.8

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In ■ COBS 2.3.1R, a reference to “*designated investment business*” is to be construed as a reference to any *OPS activity* that does not fall within the scope of ■ COBS 18.8A.5R.

### Inducements and research

18.8A.9

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The provisions in ■ COBS 2.3B (Inducements and research) apply to an *OPS firm* with the following modifications:

- (1) ■ COBS 2.3B.1R does not apply;
- (2) for the *guidance* in ■ COBS 2.3B.2G substitute the following *guidance*:
 

“(1) An *OPS firm* is prohibited from receiving inducements (other than acceptable minor non-monetary benefits) in relation to *OPS activity* falling within the scope of ■ COBS 18.8A.5R. Compliance with ■ COBS 2.3B (Inducements and research) allows such a *firm* to receive third party *research* (relating to *OPS activity* falling within the scope of ■ COBS 18.8A.5R) without breaching the prohibition in ■ COBS 2.3A.16R.

(2) An *OPS firm* may receive third party *research* in relation to *OPS activity* falling within the scope of ■ COBS 18.8A.7R without subjecting that *research* to an assessment under the inducement *rule* in ■ COBS 2.3.1R if the *research* is acquired in accordance with ■ COBS 2.3B as such *research* will not constitute an inducement.”;
- (3) the reference in ■ COBS 2.3B.3R to “■ COBS 2.3A.5R” should be construed as a reference to ■ COBS 2.3.1R (Rule on inducements);
- (4) in relation to an *OPS firm* carrying out *OPS activity* falling within the scope of ■ COBS 18.8A.5R, for the *guidance* in ■ COBS 2.3B.22G substitute:
 

“An *OPS firm* should also consider whether the goods or services it is looking to receive are acceptable minor non-monetary benefits under ■ COBS 2.3A.19R or ■ COBS 2.3A.22G, which can be received without breaching the inducement *rule* in ■ COBS 2.3A.16R(2).”;
- (5) ■ COBS 2.3B.22G does not apply to an *OPS firm* that is carrying on *OPS activity* falling within the scope of ■ COBS 18.8A.7R; and
- (6) a reference to “*ancillary services*” or “*investment services*” in ■ COBS 2.3B.3R, ■ COBS 2.3B.4R and ■ COBS 2.3B.5R is to be construed as a reference to, as applicable, either:

- (a) *OPS activity* that falls within the scope of ■ COBS 18.8A.5R; or
- (b) *OPS activity* that falls within the scope of ■ COBS 18.8A.7R.

### Suitability

18.8A.10 **R** The COBS provisions in Table 3 apply:

- (1) to an *OPS firm* when it carries on *OPS activity* which is:
  - (a) making a *personal recommendation* in relation to a *designated investment*; or
  - (b) *managing investments*; and
- (2) as modified by ■ COBS 18.8A.11R.

Table 3	
COBS	Description
2.1.1R	Client's best interests rule
9.2.1R	Assessing suitability: the obligations
9.2.2R	Assessing suitability: the obligations
9.2.3R	Assessing suitability: the obligations
9.2.4R	Assessing suitability: the obligations
9.2.5R	Reliance on information
9.2.6R	Insufficient information
9.2.7G	Insufficient information
9.3.1G	Guidance on assessing suitability
9.3.2G	Churning and switching
9.5.1G	Record keeping and retention periods for suitability records

### Modification of suitability rules

18.8A.11 **R** In ■ COBS 9.2.7G for that part which states,

"...The *firm* should also bear in mind the *client's best interests rule* and any other obligation it may have under the *rules* relating to appropriateness when providing the different service (see ■ COBS 10, Appropriateness (for non-advised services)) and ■ COBS 10A, Appropriateness (for non-advised services) (MiFID provisions)).",

substitute,

"The *firm* should bear in mind any other obligation it may have under the *rules* relating to the different service being requested by the *client*."

### Professional clients

8.8A.12 **R** (1) If an *OPS firm* makes a *personal recommendation* to a *per se professional client* the *firm* is entitled to assume that the *client* is able financially to bear any related investment risks consistent with the *client's* investment objectives for the purposes of ■ COBS 9.2.2R(1)(b).

- (2) If an *OPS firm* makes a *personal recommendation* or *manages investments* for a *professional client* it is entitled to assume that, in relation to the products, transactions and services for which the *professional client* is so classified, the *client* has the necessary level of experience and knowledge for the purposes of ■ COBS 9.2.2R(1)(c).

### Best execution

18.8A.13 **R** The provisions in ■ COBS 11.2A (Best execution – MiFID provisions) apply:

- (1) to an *OPS firm* when it carries on *OPS activity* which is *executing* an order for a *client* in relation to a *financial instrument*; and
- (2) as modified by ■ COBS 18.8A.15R.

18.8A.14 **R** The provisions in ■ COBS 11.2A (Best execution – MiFID provisions) marked “EU” and ■ COBS 11 Annex 1EU (Regulatory Technical Standard 28) apply to an *OPS firm* to which (1) applies as if they were *rules*.

### Modification of best execution rules

- 18.8A.15 **R**
- (1) The reference to the inducement requirements in ■ COBS 11.2A.19R is to be construed as a reference to, as applicable, the inducement requirements applying to an *OPS firm* pursuant to either:
- (a) ■ COBS 18.8A.5R; or
- (b) ■ COBS 18.8A.7R.
- (2) The requirement in ■ COBS 11.2A.34EU (see article 65(6) of the *MiFID Org Regulation*) to make public for each class of *financial instruments*:
- (a) the top five *investment firms* used by an *OPS firm* to *execute client orders*; and
- (b) information on the quality of execution obtained, applies in accordance with (3).
- (3) The information to be made public under (2) must:
- (a) be published for the first time no later than 30 April 2019 and then annually no later than 30 April of each subsequent year; and
- (b) relate to the calendar year immediately preceding the year in which the information is being made public.
- (4) In ■ COBS 11.2A, a reference to:
- (a) “*investment service*” is to be construed as a reference to any *OPS activity* falling within the scope of ■ COBS 18.8A.13R;
- (b) “*portfolio management*” in ■ COBS 11.2A.34EU (see article 65(1) of the *MiFID Org Regulation*) is to be construed as a reference to *OPS activity* falling within the scope of ■ COBS 18.8A.13R and which involves the *OPS firm* placing orders with other entities for execution that result from decisions by the *OPS firm* to deal in *financial instruments* on behalf of its *client*; and

- (c) "reception and transmission of orders" is to be construed as a reference to *OPS activity* falling within the scope of
  - COBS 18.8A.13R and which involves the transmission of *client* orders to other entities for execution.

**Client order handling**

- 18.8A.16 **R**
- (1) The *COBS* provisions in ■ COBS 11.3 (Client order handling) apply to an *OPS firm*, as modified by this *rule*.
  - (2) The provisions in ■ COBS 11.3 (Client order handling) marked "EU" apply to an *OPS firm* as if they were *rules*.
  - (3) A *rule* in ■ COBS 11.3 which applies only to a *UCITS management company* or a *management company* does not apply to an *OPS firm*.
  - (4) A reference to "*financial instrument*" is to be construed as a reference to a *designated investment* (other than a *P2P agreement*).

**Personal account dealing**

- 18.8A.17 **R**
- The provisions in ■ COBS 11.7 (Personal account dealing), other than ■ COBS 11.7.2R(1), apply to an *OPS firm*.

**Client reporting**

- 18.8A.18 **R**
- (1) The provisions in ■ COBS 16.2 (Occasional reporting) and ■ COBS 16.3 (Periodic reporting) apply to an *OPS firm*, as modified by this *rule*.
  - (2) In ■ COBS 16.2.6R (Special cases) add the following paragraph after ■ COBS 16.2.6R(3):
 

"(4) the *firm* is an *OPS firm* and carries on *OPS activity* for an *occupational pension scheme trustee* who is a *professional client* and who is habitually resident in the *United Kingdom*. In this case, the *OPS firm* may rely upon the exceptions in ■ COBS 16.2.1R(2) or ■ COBS 16.2.6R(1) only if it provides a *periodic statement* to the *professional client* containing the information required by ■ COBS 18.8A.18R(3)."
  - (3) Where an *OPS firm* carries on *OPS activity* and is obliged to provide a *periodic statement*, the *periodic statement* must contain the information in the table below.

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity	
(a)	Investment objectives A statement of any investment objectives governing the mandate of the portfolio of the <i>occupational pension scheme</i> as at the closing and starting date of the <i>periodic statement</i> .
(b)	Details of any asset loaned or charged

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

	<p>(i) a summary of any <i>investments</i> that were, at the closing date, lent to a third party and any <i>investments</i> that were at that date charged to secure borrowings made on behalf of the portfolio; and</p> <p>(ii) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period and a comparison with the previous period.</p>
(c)	<p><i>Transactions</i> and changes in composition</p> <p>(i) a summary of the <i>transactions</i> entered into for the portfolio during the period and a comparison with the previous period;</p> <p>(ii) the aggregate of <i>money</i> and a summary of all <i>investments</i> transferred into and out of the portfolio during the period; and</p> <p>(iii) the aggregate of any interest payments, dividends and other benefits received by the <i>firm</i> for the portfolio during that period and a comparison with the previous period.</p>
(d)	<p><i>Charges and remuneration</i></p> <p>If not previously advised in writing, a statement for the period of account:</p> <p>(i) of the aggregate <i>charges</i> of the <i>firm</i> and its <i>associates</i>; and</p> <p>(ii) of any <i>remuneration</i> received by the <i>firm</i> or its <i>associates</i> or both from a third party in respect of the <i>transactions</i> entered into, or any other services provided, for the portfolio.</p>
(e)	<p>Movement in value of portfolio</p> <p>A statement of the difference between the value of the portfolio at the closing date of the period of account and its value at the starting date, having regard, during the period of account, to:</p> <p>(i) the aggregate of assets received from the <i>occupational pension scheme</i> and added to the portfolio;</p> <p>(ii) the aggregate of the value of assets transferred, or of amounts paid, to the <i>client</i>;</p>



Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

- (iii) the aggregate income received on behalf of the *client* in respect of the portfolio; and
- (iv) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio.

**Record keeping: general**

**18.8A.19** **G** An *OPS firm* should ensure that it keeps a record of its compliance with the requirements in this section in accordance with **SYSC 9.1.1R** (General requirements) which contains general record-keeping requirements that apply to an *OPS firm*.

**Record keeping: suitability**

**18.8A.20** **R**

- (1) An *OPS firm* must retain its records relating to suitability for a minimum period of three years.
- (2) The requirement in (1) does not apply if the *client* does not proceed with the recommendation.

**Record keeping: client orders and transactions**

**18.8A.21** **R** The *rules* in **COBS 18 Annex 2** (Record keeping: client orders and transactions) apply to an *OPS firm*.