Chapter 22

Restrictions on the distribution of certain complex investment products
22.2 Restrictions on the retail distribution of mutual society shares

22.2.1 R

(1) The requirements in this section apply to a firm when dealing in or arranging a deal in a mutual society share with or for a retail client in the United Kingdom where the retail client is to enter into the deal as buyer.

(2) The requirements in this section do not apply if:

(a) the firm has taken reasonable steps to ensure that one (or more) of the exemptions in COBS 22.2.4R applies; or

(b) the deal relates to the trading of a mutual society share in the secondary market.

In this section, a retail client of the firm includes a person who would be a retail client if he were receiving services in the course of the firm carrying on a regulated activity.

22.2.1A G

COBS 22.2 does not apply in relation to deferred shares issued by a credit union. Firms are reminded that CREDS 3A contains requirements regarding the retail distribution of these shares.

Risk warning requirement

22.2 R

The firm must give the retail client the following risk warning on paper or another durable medium and obtain confirmation in writing from the retail client that he has read it, in good time before the retail client has committed to buy the mutual society share:

“The investment to which this communication relates is a share. Direct investment in shares can be high risk and is very different to investment in deposit accounts or other savings products. In particular, you should note that:

- the entire amount you invest is at risk;
- income, distribution or dividend payments are not guaranteed, are entirely discretionary, and may be suspended or cancelled at any time, for any reason;
- the share is a perpetual instrument with no maturity date, and there is no obligation on the issuer to buy the share back;
- the share may be difficult to sell on for the price you paid for it, or any price; and
- investing more than 10% of your savings or net investment portfolio in this type of instrument is unlikely to be in your best interests.”
Further requirements for non-advised, non-MiFID sales

22.2.3 The requirements in (2) and (3) must be met if:

(a) the firm is not providing an investment service in the course of MiFID or equivalent third country business; and

(b) the retail client is not otherwise receiving a personal recommendation on the mutual society share from the firm or another person.

(2) The firm must give the retail client the following statement on paper or another durable medium and obtain confirmation in writing from the retail client that he or she has signed it, in good time before the retail client has committed to buy the mutual society share:

“I make this statement in connection with proposed investment in mutual society shares. I have been made aware that investing more than 10% of my net assets in mutual society shares is unlikely to be in my best interests. I declare that the proposed investment would not result in more than 10% of my net assets being invested in mutual society shares. Net assets for these purposes mean my financial assets after deduction of any debts I have, and do not include:

(a) the property which is my primary residence, any amount owed under a mortgage relating to the purchase of that property, or any money raised through a loan secured on that property;

(b) any rights of mine under a qualifying contract of insurance (for example, a life assurance or critical illness policy);

(c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are) or may be entitled; or

(d) any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

I accept that the investment to which this statement relates will expose me to a significant risk of losing all the money invested.

Signature:

Date: ”

(3) The firm must assess whether investment in the mutual society share is appropriate for the retail client, complying with the requirements in COBS 10 as though the firm was providing non-advised investment services in the course of MiFID or equivalent third country business.

22.2.4 Each of the exemptions listed below applies only if the retail client is of the type described for the exemption and provided any additional conditions for the exemption are met.

<table>
<thead>
<tr>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certified high net worth investor</td>
<td>(a)An individual who meets the requirements set out in COBS 4.12.6R; or</td>
<td>The firm must consider that the mutual society share is likely to be suitable for that individual, based on a pre-</td>
</tr>
</tbody>
</table>
COBS 22 : Restrictions on the distribution of certain complex investment products

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<tr>
<th>Title</th>
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<tbody>
<tr>
<td>Certified sophisticated investor</td>
<td>(b) a person (or persons) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) above.</td>
<td>liminary assessment of that individual’s profile and objectives (see COBS 4.12.5G(2)).</td>
</tr>
<tr>
<td>Self-certified sophisticated investor</td>
<td>Not applicable.</td>
<td></td>
</tr>
</tbody>
</table>

Certified sophisticated investor

- (a) An individual who meets the requirements set out in COBS 4.12.7R; or
- (b) An individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm’s client.

Self-certified sophisticated investor

- (a) An individual who meets the requirements set out in COBS 4.12.8R; or
- (b) An individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm’s client.

Adaptation of other rules and guidance to mutual society shares

(1) For the purposes of any assessments or certifications required by the exemptions in COBS 22.2.4R, any references in COBS 4.12 provisions to non-mainstream pooled investments must be read as though they are references to mutual society shares.

(2) If the firm is relying on the exemptions for certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors to comply with this section, the statement the investor must sign should have references to non-mainstream pooled investments replaced with references to mutual society shares.

(2) The firm must give the retail client a written copy of any risk warning or statement that that individual has been asked to sign for the purposes of compliance with this section.
Record keeping

22.2.6  
A firm which carries on an activity which is subject to this section must comply with the following record-keeping requirements:

1. the person allocated the compliance oversight function in the firm must make a record at or near the time of the activity certifying it complies with the requirements set out in this section;

2. the making of the record required in (1) may be delegated to one or more employees of the firm who report to and are supervised by the person allocated the compliance oversight function, provided the process for certification of compliance has been reviewed and approved by the person allocated the compliance oversight function no more than 12 months before the date of the deal;

3. the record in (1) must include information and evidence demonstrating compliance with each of the requirements in this section, as applicable;

4. if the requirements in COBS 22.2.2R and COBS 22.2.3R did not apply because the firm relied on one of the exemptions, the record in (1) must include which exemption was relied on, together with the reason why the firm is satisfied that that exemption applies;

5. where the firm relies on the certified high net worth investor, the certified sophisticated investor or the self-certified sophisticated investor exemption, the record required in (1) must include a copy of the certificate or investor statement (as signed by the investor) and of the warnings or indications required by the exemption;

6. a firm must retain the record required in (1) for five years if it relates to MiFID or equivalent third country business, and otherwise for three years.

Electronic documents

22.2.7  
In this section:

1. any requirement that a document is signed may be satisfied by an electronic signature or electronic evidence of assent; and

2. any references to writing should be construed in accordance with GEN 2.2.14R and its related guidance provisions.
22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

Restrictions

22.3.1 (1) The restrictions in this section apply in relation to the following investments:
(a) a contingent convertible instrument; or
(b) a security issued by a CoCo fund; or
(c) a beneficial interest in either of (a) or (b).

(2) A firm must not:
(a) sell an investment to a retail client in the United Kingdom; or
(b) communicate or approve an invitation or inducement to participate in, acquire or underwrite an investment where that invitation or inducement is addressed to or disseminated in such a way that it is likely to be received by a retail client in the United Kingdom.

(3) The restrictions do not apply if the firm has taken reasonable steps to ensure that one (or more) of the exemptions in COBS 22.3.2R applies.

(4) In this section a retail client includes a person who would be a retail client if he were receiving services from the firm in the course of the firm carrying on a regulated activity.

Exemptions

22.3.2 Each of the exemptions listed below applies only if the retail client is of the type described for the exemption and provided any additional conditions for the exemption are met.

<table>
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<tbody>
<tr>
<td>Certified high net worth investor</td>
<td>(a) An individual who meets the requirements set out in COBS 4.12.6R; or (b) A person (or persons) legally empowered to make investment decisions on behalf of an individual</td>
<td>The firm must consider that the investment is likely to be suitable for that individual, based on a preliminary assessment of that individual’s profile and objectives (see COBS 4.12.5G(2)).</td>
</tr>
</tbody>
</table>
### COBS 22: Restrictions on the distribution of certain complex investment products

#### Section 22.3: Restrictions on the retail distribution of certain complex investment products and CoCo funds

<table>
<thead>
<tr>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certified sophisticated investor</td>
<td>who meets the earnings or net asset requirements in (a) above.</td>
<td>Not applicable.</td>
</tr>
<tr>
<td></td>
<td>(a) An individual who meets the requirements set out in COBS 4.12.7R; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) An individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm’s client.</td>
<td></td>
</tr>
<tr>
<td>Self-certified sophisticated investor</td>
<td>(a) An individual who meets the requirements set out in COBS 4.12.8R; or</td>
<td>The firm must consider that the investment is likely to be suitable for that individual, based on a preliminary assessment of that individual’s profile and objectives (see COBS 4.12.5G(2)).</td>
</tr>
<tr>
<td></td>
<td>(b) An individual who meets the requirements for (a) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm’s client.</td>
<td></td>
</tr>
<tr>
<td>Solicited advice</td>
<td>Any retail client.</td>
<td>The restrictions do not apply provided all of the following requirements are met:</td>
</tr>
<tr>
<td></td>
<td>(a) there is no invitation or inducement to participate in, acquire or underwrite the investment other than a personal recommendation on the investment;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) the personal recommendation is made following a specific request by that client for advice on the investment; and</td>
<td></td>
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<tr>
<td></td>
<td>(c) the client has not previously received any other communication (whether or not a fin-</td>
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</tr>
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## COBS 22: Restrictions on the retail distribution of certain complex investment products

### Section 22.3: Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

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<tr>
<th>Title</th>
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</tr>
</thead>
<tbody>
<tr>
<td>MiFID or equivalent third country business other than financial promotions</td>
<td>Any retail client</td>
<td>COBS 22.3.1R(2)(a) does not apply to MiFID or equivalent third country business (see COBS 9.3.5G).</td>
</tr>
<tr>
<td>Prospectus</td>
<td>Any retail client</td>
<td>The restrictions do not apply to the distribution of a prospectus required under the Prospectus Regulation.</td>
</tr>
<tr>
<td>Issuers</td>
<td>Any retail client</td>
<td>To the extent that the firm is acting as issuer of a contingent convertible instrument, the restrictions only apply to the original issuance of the contingent convertible instrument and not to subsequent trading in the secondary market.</td>
</tr>
<tr>
<td>Indirect investment</td>
<td>Any retail client</td>
<td>The restrictions do not apply in relation to a beneficial interest in a contingent convertible instrument acquired through participation in a regulated collective investment scheme, investment in a non-mainstream pooled investment (provided it is not a CoCo fund), or membership of an occupational pension scheme.</td>
</tr>
</tbody>
</table>

### Note 1
A person is connected with a firm if it acts as an introducer or appointed representative for that firm or if it is any other person, regardless of authorisation status, who has a relevant business relationship with the firm.

### Note 2
See COBS 2.4 for rules and guidance on agent as client and reliance on others.

### Adaptation of other rules and guidance to contingent convertible instruments and CoCo funds

(1) For the purposes of any assessments or certifications required by the exemptions in § COBS 22.3.2R, any references in § COBS 4.12 provisions
COBS 22: Restrictions on the distribution of certain complex investment products

Section 22.3: Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

COBS 22/9

A firm wishing to certify a retail client as a sophisticated investor for the purposes of this section should note that, in the FCA’s view, it is likely that the only retail clients with the requisite sophistication in relation to contingent convertible instruments or CoCo funds are those with significant experience with investment in multiple types of complex financial instruments and who have sufficient understanding of how credit institutions are run, including risks to the ability of those institutions to meet prudential requirements on an ongoing basis.

Record keeping

A firm which carries on an activity which is subject to this section must comply with the following record-keeping requirements:

1. the person allocated the compliance oversight function in the firm must make a record at or near the time of the activity certifying it complies with the restrictions set out in this section;

2. the making of the record required in (1) may be delegated to one or more employees of the firm who report to, and are supervised by, the person allocated the compliance oversight function, provided the process for certification of compliance has been reviewed and approved by the person allocated the compliance oversight function no more than 12 months before the date of the sale or communication or approval of the invitation or inducement;

3. when making the record required in (1), the firm must make a record of which exemption was relied on for the purposes of the activity within the scope of this section, together with the reason why the firm is satisfied that that exemption applies;

4. where the firm relies on the certified high net worth investor, the certified sophisticated investor or the self-certified sophisticated investor exemption, the record in (1) must include a copy of the certificate or investor statement (as signed by the investor) and of the warnings or indications required by the exemption, as applicable;

5. a firm must retain the record required in (1) for five years if it relates to MiFID or equivalent third country business, and otherwise for three years.

(2) If the firm is relying on the high net worth investor, the sophisticated investor or the self-certified sophisticated investor exemption to comply with this section, the statement the investor must sign should have references to non-mainstream pooled investments replaced with references to contingent convertible instruments or CoCo funds, as relevant.

(3) The firm must give the retail client a written copy of any statements that individual has been asked to sign as part of certification as a high net worth, sophisticated or self-certified sophisticated investor for the purposes of compliance with this section.

to non-mainstream pooled investments must be read as though they are references to contingent convertible instruments or CoCo funds, as relevant.
22.3.6 To the extent the requirements in COBS 22.3.5R apply to the communication or approval of any invitation or inducement, such requirements are in addition to those set out in COBS 4.11.
COBS 22 : Restrictions on the distribution of certain complex investment products

Section 22.4 : Prohibition on the retail marketing, distribution and sale of derivative contracts of a binary or other fixed outcomes nature

22.4 Prohibition on the retail marketing, distribution and sale of derivative contracts of a binary or other fixed outcomes nature

Application

22.4.1 This section applies to:

(1) MiFID investment firms, with the exception of collective portfolio management investment firms; and

(2) branches of third country investment firms,

in relation to the marketing, distribution or sale of investments specified in articles 85(4A) and 85(4B) of the Regulated Activities Order in or from the United Kingdom to a retail client.

22.4.2 Firms are reminded that the Glossary definition of MiFID investment firm includes CRD credit institutions when those institutions are providing an investment service or activity.

22.4.2A Persons (including unauthorised persons) who benefit from a temporary exemption or exclusion from the general prohibition under:

(1) Part 7 of the EU Exit Passport Regulations; or

(2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)

are required to comply with the rules in this section as a consequence of:

(3) regulation 59 of the EU Exit Passport Regulations; or

(4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

22.4.3 For the avoidance of doubt, in COBS 22.4.1R, “marketing” includes communicating and/or approving financial promotions, and “distribution or sale” includes dealing in relation to investments specified in articles 85(4A) and 85(4B) of the Regulated Activities Order.
Prohibitions

(1) A firm must not:

(a) sell an investment specified in articles 85(4A) and 85(4B) of the Regulated Activities Order to a retail client; or

(b) distribute an investment specified in articles 85(4A) and 85(4B) of the Regulated Activities Order to a retail client; or

(c) market an investment specified in articles 85(4A) and 85(4B) of the Regulated Activities Order if the marketing is addressed to or disseminated in such a way that it is likely to be received by a retail client.

(2) “Marketing” includes, but is not limited to, communicating and/or approving financial promotions.
22.5 Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative investments

Application

22.5.1 (1) Subject to ■ COBS 22.5.1AR and ■ COBS 22.5.1BG this section applies to:

(a) MiFID investment firms with the exception of collective portfolio management investment firms; and

(b) branches of third country investment firms,

in relation to the marketing, distribution or sale of restricted speculative investments in or from the United Kingdom to a retail client.

(2) [deleted]

22.5.1A Persons (including unauthorised persons) who benefit from a temporary exemption or exclusion from the general prohibition under:

(1) Part 7 of the EU Exit Passport Regulations; or

(2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)

are required to comply with the rules in this section as a consequence of:

(3) regulation 59 of the EU Exit Passport Regulations; or

(4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

22.5.1A The rules in this section do not apply to the sale and distribution of restricted options by a firm (F) in circumstances where F sells a restricted option to a retail client through an intermediary.

22.5.1B For the avoidance of doubt, the exclusion in ■ COBS 22.5.1AR only applies to F.

22.5.1C [deleted]

22.5.2 [deleted]
Firms are reminded that the Glossary definition of MiFID investment firm includes CRD credit institutions when those institutions are providing an investment service or activity.

For the avoidance of doubt, “marketing” restricted speculative investments includes communicating and/or approving financial promotions, and “distribution or sale” includes dealing in relation to restricted speculative investments.

The rules in this section do not apply to:

1. derivative instruments for the transfer of credit risk to which article 85(3) of the Regulated Activities Order applies; or

2. cryptoasset derivatives.

Firms are reminded of the prohibitions in relation to the marketing, distribution and sale of cryptoasset derivatives in COBS 22.6.

Standardised risk warning

Subject to COBS 22.5.7R and COBS 22.5.7AR, a firm must not:

(a) market, publish, provide or communicate in any other way any communication or information in a durable medium or on a webpage or website to a retail client, or in such a way that it is likely to be received by a retail client;

(b) approve or communicate a financial promotion in a durable medium or on a webpage or website; or

(c) disseminate such a communication, information or financial promotion to a retail client, or in such a way that it is likely to be received by a retail client,

unless the firm includes one of the following risk warnings, as appropriate.

If a firm markets, distributes or sells:

(a) leveraged contracts for differences;

(b) leveraged spread bets; or

(c) leveraged rolling spot forex contracts,

the firm must include the following risk warning:

“CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. [insert percentage per provider]% of retail investor accounts lose money when trading CFDs with this provider. You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.”

If a firm markets, distributes or sells:

restricted options; and
one or more of the following:
leveraged contracts for differences;
leveraged spread bets; or
leveraged rolling spot forex contracts,
the firm must include the following risk warning:

“CFDs and restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.

[insert percentage per provider]% of retail investor accounts lose money when trading CFDs and restricted options with this provider.

You should consider whether you understand how CFDs and restricted options work and whether you can afford to take the high risk of losing your money.”

If a firm markets, distributes or sells restricted options but does not market, distribute or sell leveraged contracts for differences, leveraged spread bets or leveraged rolling spot forex contracts, the firm must include the following risk warning:

“Restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.

[insert percentage per provider]% of retail investor accounts lose money when trading restricted options with this provider.

You should consider whether you understand how restricted options work and whether you can afford to take the high risk of losing your money.”

(2) The risk warning must be modified as necessary to refer to the percentage of retail client accounts that lost money relevant to the firm.

(3) The firm’s disclosure of the percentage of retail client accounts that lost money must include an up-to-date percentage based on a calculation of the percentage of retail client accounts held with the firm that lost money.

(4) The calculation in (3) must be performed every three months and cover the 12-month period preceding the date of the calculation.

(5) For the purposes of the calculation in (3), an individual retail client account must be considered to have lost money if the sum of all realised and unrealised net profits on restricted speculative investments traded in that retail client’s account during the 12-month calculation period is below zero.

(6) The calculation in (3) must include all costs, fees, commissions and any other charges.

(7) The calculation in (3) must not include:

(a) a retail client account that did not have an open restricted speculative investment connected to it within the calculation period;
(b) any profits or losses from investments other than restricted speculative investments;
(c) any deposits of funds; or
(d) any withdrawals of funds.

(8) The firm must retain records of the retail client accounts used for these calculations for five years.

(9) Where the retail client has not approached the firm through a website or mobile application, the risk warning must be provided in a durable medium in good time before the firm carries on any business for the retail client.

(10) Where the communication, information or financial promotion referred to in COBS 22.5.6R(1) is in a medium other than a durable medium, website or webpage, firms must include one of the following risk warnings, as appropriate.

(10A) Subject to 10B, if a firm markets, distributes or sells:

(a) leveraged contracts for differences;
(b) leveraged spread bets; or
(c) leveraged rolling spot forex contracts,
the firm must include the following risk warning:

“[insert percentage per provider]% of retail investor accounts lose money when trading CFDs with this provider.
You should consider whether you can afford to take the high risk of losing your money.”

(10B) If a firm markets, distributes or sells:

(a) restricted options; and
(b) one or more of the following:

(i) leveraged contracts for difference;
(ii) leveraged spread bets; or
(iii) leveraged rolling spot forex contracts,
the firm must include the following risk warning:

“[insert percentage per provider]% of retail investor accounts lose money when trading CFDs and restricted options with this provider.
You should consider whether you can afford to take the high risk of losing your money.”

(10C) If a firm markets, distributes or sells restricted speculative options but does not market, distribute or sell leveraged contracts for differences, leveraged spread bets or leveraged rolling spot forex contracts, the firm must include the following risk warning:

“[insert percentage per provider]% of retail investor accounts lose money when trading restricted options with this provider.
You should consider whether you can afford to take the high risk of losing your money.”

(11) For the purposes of COBS 22.5.6R(10), if the number of characters contained in that risk warning exceeds the character limit permitted...
by a third party marketing provider, the following risk warning must be used:

[insert percentage per provider]% of retail CFD accounts lose money."

(12) Where the risk warning in § COBS 22.5.6R(11) is used, the firm must ensure that the risk warning is accompanied by a direct link to the firm’s webpage which contains the risk warning in § COBS 22.5.6R.

22.7

(1) This rule applies when:

(a) a firm is required to perform the calculation of percentage of loss for the purposes of the risk warning and the firm has not entered into a single trade involving a restricted speculative investment with a retail client in the previous 12 months; and

(b) the firm’s communication, information or financial promotion is provided in a durable medium, website or webpage.

(c) [deleted]

The firm must use one of the following risk warnings as appropriate for the purposes of § COBS 22.5.6R:

(a) If a firm markets, distributes or sells:

(i) leveraged contracts for differences;

(ii) leveraged spread bets; or

(iii) leveraged rolling spot forex contracts,

the firm must use the following risk warning:

“CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

The vast majority of retail client accounts lose money when trading in CFDs.

You should consider whether you can afford to take the high risk of losing your money.”

(b) If a firm markets, distributes or sells:

(i) restricted speculative options; and

(ii) leveraged contracts for differences;

(iii) leveraged spread bets; or

(iv) leveraged rolling spot forex contracts,

the firm must use the following risk warning:

“CFDs and restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.

The vast majority of retail client accounts lose money when trading in CFDs and restricted options.

You should consider whether you can afford to take the high risk of losing your money.”

(c) If a firm markets, distributes or sells restricted options but does not market, distribute or sell leveraged contracts for differences,
leveraged spread bets or leveraged rolling spot forex contracts, the firm must use the following risk warning:

“Restricted options are complex instruments and come with a high risk of losing money rapidly due to leverage.

The vast majority of retail client accounts lose money when trading in restricted options.

You should consider whether you can afford to take the high risk of losing your money.”

(1) This rule applies when:

(a) a firm is required to perform the calculation of percentage of loss for the purposes of the risk warning and the firm has not entered into a single trade involving a restricted speculative investment with a retail client in the previous 12 months; and

(b) the firm’s communication, information or financial promotion is in a medium other than a durable medium, website or webpage.

(2) The firm must use one of the following risk warnings as appropriate for the purposes of COBS 22.5.6R:

(a) If a firm markets, distributes or sells:

(i) leveraged contracts for differences;

(ii) leveraged spread bets; or

(iii) or leveraged rolling spot forex contracts,

the firm must use the following risk warning:

“The vast majority of retail client accounts lose money when trading in CFDs.

You should consider whether you can afford to take the high risk of losing your money.”

(b) If a firm markets, distributes or sells:

(i) restricted options; and

(ii) leveraged contracts for differences;

(iii) leveraged spread bets; or

(iv) leveraged rolling spot forex contracts,

the firm must use the following risk warning:

“The vast majority of retail client accounts lose money when trading in CFDs and restricted options.

You should consider whether you can afford to take the high risk of losing your money.”

(c) If a firm markets, distributes or sells restricted options but does not market, distribute or sell leveraged contracts for differences, leveraged spread bets or leveraged rolling spot forex contracts, the firm must use the following risk warning:

“The vast majority of retail client accounts lose money when trading in restricted options.

You should consider whether you can afford to take the high risk of losing your money.”

(d) Where the number of characters contained in the risk warnings in this rule exceeds the character limit permitted by a third party marketing provider, the following risk warning must be used:
COBS 22 : Restrictions on the distribution of certain complex investment products

Section 22.5 : Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative...

"CFD-retail client accounts generally lose money."

22.5.8   R The relevant risk warning in COBS 22.5.6R or COBS 22.5.7R must be:

(1) prominent;

(2) contained within its own border and with bold and unbold text as indicated;

(3) if provided on a website or via a mobile application, statically fixed and visible at the top of the screen even when the retail client scrolls up or down the webpage; and

(4) if provided on a website, included on each linked webpage on the website.

22.5.9   G The relevant risk warning, including the font size, should be:

(1) proportionate, taking into account the content, size and orientation of the marketing material as a whole; and

(2) published against a neutral background.

Margin requirements for retail clients

22.5.10   R A firm must not open a position in relation to a restricted speculative investment for a retail client unless the margin posted to open the position is in the form of money.

22.5.11   R A firm must require a retail client to post margin to open a position of at least the following amounts:

(1) 3.33% of the value of the exposure that the trade provides when the underlying asset is a major foreign exchange pair or relevant sovereign debt;

(2) 5% of the value of the exposure that the trade provides when the underlying asset is a major stock market index, minor foreign exchange pair or gold;

(3) 10% of the value of the exposure that the trade provides when the underlying asset is a minor stock market index or a commodity other than gold; or

(4) [deleted]

(5) 20% of the value of the exposure that the trade provides when the underlying asset is a share or an asset not otherwise listed in COBS 22.5.11R(1) to (4) above.

22.5.12   G For the purposes of COBS 22.5.11R, “exposure” means the total value of the exposure that the restricted speculative investment provides. Examples are set out below.
1. A firm offers a **restricted speculative investment** when the underlying asset is a 5 x leveraged index on gold. The value of the index is £800. The value of the exposure that the trade provides is therefore £800 x 5, or £4000; or

2. A firm offers a **contract for differences** where the underlying asset is a **restricted option** that references the FTSE 100. For this **contract for differences**, the value of the exposure that the trade provides is equal to the value of the underlying asset of the **restricted option**. For pricing the **restricted option**, the firm offers £1 of exposure for each point of the FTSE 100. Under these terms, if the retail client buys the **contract for differences** on a **restricted option** when the FTSE 100 is trading at 7070, the value of the exposure that the trade provides is £7070 (i.e. 7070 x £1).

### Margin close out requirements for retail clients

1. A firm must ensure a retail client’s net equity in an account used to trade **restricted speculative investments** does not fall below 50% of the margin requirement (as outlined in §COBS 22.5.11R) required to maintain the retail client’s open positions.

2. Where a retail client’s net equity falls below 50% of the margin requirement, the firm must close the retail client’s open position(s) on restricted speculative investments as soon as market conditions allow.

3. In this rule, “net equity” means the sum of the retail client’s net profit and loss on their open position(s) and the retail client’s deposited margin.

### A firm must not maintain an open position in relation to a **restricted speculative investment** for a retail client unless the margin posted to maintain the open position is in the form of money.

### A firm must provide to a retail client a clear description in a durable medium or make available on a website (where that does not constitute a durable medium) that meets the website conditions of how the retail client’s margin close out level will be calculated and triggered:

1. in good time before the retail client opens their first position; and

2. in good time before any change to the terms and conditions applicable to the retail client takes effect.

Firms are reminded that they must comply with §COBS 2.1.1R (the client’s best interests rule) and §COBS 11.2A.2R (obligation to execute orders on terms most favourable to the client) when:

1. making a margin call to a retail client; or

2. exercising a discretionary right to close a retail client’s position; or

3. closing a retail client’s position(s).
Negative balance protection

22.5.17 R The liability of a retail client for all restricted speculative investments connected to the retail client’s account is limited to the funds in that account.

22.5.18 G ■ COBS 22.5.17R means that a retail client cannot lose more than the funds specifically dedicated to trading restricted speculative investments.

22.5.19 G For the purposes of ■ COBS 22.5.17R, funds in a retail client’s account are limited to the cash in the account and unrealised net profits from open positions. “Unrealised net profits from open positions” means the sum of unrealised gains and losses of all open positions recorded in the account. Any funds or other assets in the retail client’s account for purposes other than trading restricted speculative investments should be disregarded.

Restrictions on monetary incentives and non-monetary incentives

22.5.20 R A firm must not offer to a retail client, or provide a retail client with, any of the following when marketing, distributing or selling a restricted speculative investment:

(1) a monetary incentive; or

(2) a non-monetary incentive.

22.5.21 G For the purposes of ■ COBS 22.5.20R:

(1) monetary incentives include, but are not limited to, the offering of bonuses in relation to the opening of a new account or the offering of rebates on fees (including volume-based rebates);

(2) lower fees offered to all retail clients do not constitute a monetary incentive; and

(3) information and research tools do not constitute non-monetary incentives.

Other products

22.5.22 G Firms that market, distribute or sell derivatives with similar features to restricted speculative investments (particularly where the derivatives are leveraged) to retail clients, should have particular regard to how they comply with applicable obligations found elsewhere in the FCA Handbook, including, where relevant:

(1) ■ COBS 2.1.1R (The client’s best interests rule);

(2) ■ COBS 4.2.1R (The fair, clear and not misleading rule);

(3) ■ COBS 9A (Suitability (MiFID and insurance-based investment products provisions));
(4) COBS 10A (Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions));

(5) PRIN, particularly principles 1, 2 and 6; and

(6) PROD 3 (Product governance: MiFID).
22.6 Prohibition on the retail marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes

Application

22.6.1 This section applies to:

(1) MiFID investment firms, with the exception of collective portfolio management investment firms;

(2) branches of third country investment firms;

(3) MiFID optional exemption firms; and

(4) TP firms which are EEA MiFID investment firms with the exception of collective portfolio management investment firms,

in relation to the marketing, distribution or sale of cryptoasset derivatives and cryptoasset exchange traded notes in or from the United Kingdom to a retail client.

22.6.2 In addition to the persons listed above, persons (including unauthorised persons) who benefit from a temporary exemption or exclusion from the general prohibition under:

(1) Part 7 of the EU Exit Passport Regulations; or

(2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361)

are required to comply with the rules in this section as a consequence of:

(3) regulation 59 of the EU Exit Passport Regulations; or

(4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

22.6.3 Firms and TP firms are reminded that the Glossary definition of MiFID investment firm includes CRD credit institutions when those institutions are providing an investment service or activity.
22.6.4 **G** For the avoidance of doubt, in **COBS 22.6.1R**, “marketing” includes communicating and/or approving financial promotions, and “distribution or sale” includes dealing in relation to cryptoasset derivatives and cryptoasset exchange traded notes.

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22.6.5 **R** Prohibitions

(1) A firm or TP firm must not:

(a) sell a cryptoasset derivative or a cryptoasset exchange traded note to a retail client; or

(b) distribute a cryptoasset derivative or a cryptoasset exchange traded note to a retail client; or

(c) market a cryptoasset derivative or a cryptoasset exchange traded note if the marketing is addressed to or disseminated in such a way that it is likely to be received by a retail client.

(2) “Marketing” includes, but is not limited to, communicating and/or approving financial promotions.