

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
- 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

- 22.2.2 **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

- (i) 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

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- (1) 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

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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.

Title	Type of retail client	Additional conditions
Certified high net worth investor	(a) An individual who meets the requirements set out in COBS 4.12B.38R; or (b) a <i>person</i> (or <i>persons</i>) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) above.	The <i>firm</i> must consider that the <i>mutual society share</i> is likely to be suitable for that individual, based on a preliminary assessment of that individual's profile and objectives (see COBS 4.12B.9G(2)).
Certified sophisticated investor	(a) An individual who meets the requirements set out in COBS 4.12B.39R; 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 <i>firm's</i> client.	Not applicable.
Self-certified sophisticated investor	(a) An individual who meets the requirements set out in COBS 4.12B.40R; 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 <i>person</i> who is the <i>firm's</i> client.	Not applicable.

Adaptation of other rules and guidance to mutual society shares

22.2.5

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- (1) For the purposes of any assessments or certifications required by the exemptions in ■ COBS 22.2.4R, any references in ■ COBS 4.12B provisions to *non-mass market investments* must be read as though they are references to mutual society shares.
- (2) [deleted]

- (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

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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

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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.