

Chapter 22

Restrictions on the distribution of certain complex investment products



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

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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

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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

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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

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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*.

22.4.4

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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*.