Chapter 22

Restrictions on the distribution of certain complex investment products
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.
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.

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.