

Chapter 4

Communicating with clients, including financial promotions

4.1 Application

Who? What?

4.1.1

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This chapter applies to a *firm*:

- (1) communicating with a *client* in relation to its *designated investment business* (other than *MiFID, equivalent third country or optional exemption business*);
- (1A) communicating with a *client* in relation to its *MiFID, equivalent third country or optional exemption business*;
- (2) *communicating or approving a financial promotion* other than:
 - (a) a *financial promotion of qualifying credit, a home purchase plan or a home reversion plan*; or
 - (b) a *financial promotion* in respect of a *non-investment insurance contract*; or
 - (c) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the Act if made by an *authorised person* (*firms* may not *communicate or approve* such promotions); or
 - (d) a *financial promotion* in relation to a *credit agreement, a consumer hire agreement or a credit-related regulated activity*.
- (3) when a *MiFID investment firm* or a *credit institution* is communicating in connection with selling, or advising *clients* in relation to, *structured deposits* as specified by **COBS 1.1.1AAR**.

4.1.1A

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COBS 4.4.3 R applies to a *firm* with respect to the activity of *issuing electronic money*.

4.1.2

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- (1) This chapter applies in relation to an *authorised professional firm* in accordance with **COBS 18** (Specialist regimes).
- (2) This chapter applies, to a limited extent, in relation to *communicating or approving a financial promotion* that relates to a *deposit* if the *deposit* is a *structured deposit, cash deposit ISA or cash deposit CTF*.

4.1.3

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A *firm* is required to comply with the *financial promotion rules* in relation to a *financial promotion communicated* by its *appointed representative* even

where the *financial promotion* does not require *approval* because of the exemption in article 16 of the *Financial Promotion Order* (Exempt persons).

[Note: see section 39 of the Act]

- 4.1.4 **G** (1) In **COBS 4.3.1 R**, the defined term "*financial promotion*" includes:
- (a) in relation to *MiFID, equivalent third country or optional exemption business*, all communications that are marketing communications within the meaning of *MiFID*; and
 - (b) in relation to *insurance distribution*, all communications that are marketing communications within the meaning of *IDD*.
- (2) In the case of *MiFID, equivalent third country or optional exemption business*, certain requirements in this chapter are subject to an exemption for the communication of a *third party prospectus* in certain circumstances (see recital 73 of the *MiFID Org Regulation*). This has a similar effect to the exemption in article 70(1)(c) of the *Financial Promotion Order*, which is referred to in the definition of an *excluded communication*.
- (3) In this chapter "*financial promotion*" and "*direct offer financial promotion*" include communications that are marketing communications for the purposes of the *UCITS Directive*.

4.1.5 **G** A *firm* communicating with an *eligible counterparty* should have regard to the application of *COBS* to *eligible counterparty business* (**COBS 1 Annex 1 Part 1**).

4.1.6 **G** Approving a *financial promotion* without communicating it (which includes causing it to be communicated) is not *MiFID, equivalent third country or optional exemption business*. Communicating a *financial promotion* to a *person*, such as a *corporate finance contact* or a *venture capital contact*, who is not a *client* within the meaning of **COBS 3.2.1 R (1)**, **COBS 3.2.1 R (2)** or **COBS 3.2.1 R (4)** in respect of the *MiFID, equivalent third country or optional exemption business* to which the *financial promotion* relates, is also not *MiFID, equivalent third country or optional exemption business*. Further guidance on what amounts to *MiFID business* may be found in **PERG 13**.

4.1.7 **G** A reference in this chapter to *MiFID, equivalent third country or optional exemption business* includes a reference to communications that occur before an agreement to perform services in relation to *MiFID, equivalent third country or optional exemption business*.

[Note: see recital 16 to the *MiFID Org Regulation*]

What? Modification relating to the KII Regulation

4.1.7A **R** The rules in this chapter do not apply in relation to the form or content of a *key investor information document*, an *EEA key investor information document* or a *NURS-KII document*.

- 4.1.7B G
- (1) The *KII Regulation* specifies in an exhaustive manner the form and content of the *key investor information document* for a *UCITS scheme*.
 - (2) The form and content of a *NURS-KII document* is specified by
 - COLL 4.7.3AR (Form and content of a NURS-KII document) and in
 - COLL Appendix 2R (Modifications to the KII Regulation for KII-compliant NURS).

[Note: see article 3(1) of the *KII Regulation*]

Where? General position

- 4.1.8 R
- (1) In relation to communications by a *firm* to a *client* in relation to its *designated investment business* this chapter applies in accordance with the *general application rule* and the *rule on business with UK clients* from an overseas establishment (■ COBS 1 Annex 1 Part 2 paragraph 2.1R).
 - (2) In addition, the *financial promotion rules* apply to a *firm* in relation to:
 - (a) the *communication of a financial promotion* to a *person* inside the *United Kingdom*;
 - (b) the *communication of a cold call* to a *person* outside the *United Kingdom*, unless:
 - (i) it is made from a place outside the *United Kingdom*; and
 - (ii) it is made for the purposes of a business which is carried on outside the *United Kingdom* and which is not carried on in the *United Kingdom*; and
 - (c) the *approval of a financial promotion for communication* to a *person* inside the *United Kingdom*.

Where? Modifications to comply with EU law

- 4.1.9 G
- (1) The *EEA territorial scope rule* modifies the general territorial scope of the *rules* in this chapter to the extent necessary to be compatible with European law. This means that in a number of cases, the *rules* in this chapter will apply to *communications* made by *UK firms* to *persons* located outside the *United Kingdom* and will not apply to *communications* made to *persons* inside the *United Kingdom* by *EEA firms*. Further *guidance* on this is located in ■ COBS 1 Annex 1.
 - (2) One effect of the *EEA territorial scope rule* is that the *rules* in this chapter will not generally apply to an *EEA key investor information document* but will, for example, apply to a *firm* (including an *EEA UCITS management company*) when *marketing* in the *United Kingdom* the *units* of an *EEA UCITS scheme* that is a *recognised scheme*.
 - (3) The *financial promotion rules* do not apply to incoming communications in relation to the *MiFID business* of an *investment firm* from another *EEA State* that are, in its *home member state*, regulated under *MiFID* other than to the extent ■ COBS 4.12

(Restrictions on the promotion of *non-mainstream pooled investments*) applies.

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Firms should note the territorial scope of this chapter is also affected by:

- (1) the disapplication for *financial promotions* originating outside the *United Kingdom* that are not capable of having an effect within the *United Kingdom* (section 21(3) of the Act (Restrictions on financial promotion)) (see the defined term "*excluded communication*");
- (2) the exemptions for overseas communicators (see the defined term "*excluded communication*"); and
- (3) the *rules on financial promotions* with an overseas element (see ■ COBS 4.9).