

## Chapter 4

# Communicating with clients, including financial promotions

## 4.11 Record keeping: financial promotion

### 4.11.1

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- (1) A *firm* must make an adequate record of any *financial promotion* it *communicates* or *approves*, other than a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.
- (2) For a telemarketing campaign, a *firm* must make an adequate record of copies of any scripts used.
- (2A) If a *firm communicates* or *approves* an invitation or inducement to participate in, acquire, or underwrite a *non-mainstream pooled investment* which is addressed to or disseminated in such a way that it is likely to be received by a *retail client*:
  - (a) the *person* allocated the *compliance oversight function* in the *firm* must make a record at or near the time of the communication or approval certifying that the invitation or inducement complies with the restrictions set out in section 238 of the Act and in ■ COBS 4.12.3 R, as applicable;
  - (b) the making of the record required in (a) 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 invitation or inducement;
  - (c) when making the record required in (a), the *firm* must make a record of which exemption was relied on for the purposes of the invitation or inducement, together with the reason why the *firm* is satisfied that that exemption applies;
  - (d) where the *firm* relies on an exemption that requires investor certification and warnings to investors, the record required in (a) must include a record of any certificate or investor statement (as signed by the investor) and of any warnings or indications required by the exemption;
  - (e) if the exemption relied on is that for an *excluded communication* under ■ COBS 4.12.4R (5), the *firm* must identify in the record required in (a) which type of *financial promotion* defined as an *excluded communication* corresponds to the invitation or inducement being made, including, where applicable, which article in the *Financial Promotion Order* or in the *Promotion of Collective Investment Schemes Order* was relied on for the

purposes of the invitation or inducement, together with the reason why the *firm* is satisfied that the exemption applies;

- (3) A *firm* must retain the record in relation to a *financial promotion* relating to:
  - (a) a *pension transfer, pension conversion, pension opt-out or FSAVC*, indefinitely;
  - (b) a *life policy, occupational pension scheme, SSAS, personal pension scheme or stakeholder pension scheme*, for six years;
  - (c) *MiFID or equivalent third country business*, for five years; and
  - (d) any other case, for three years.
- (4) If a communication relates to a *firm's MiFID, equivalent third country or optional exemption business*, this section does not apply:
  - (a) to the extent that the communication is a *third party prospectus*;
  - (b) if it is *image advertising*;
  - (c) if it is a *non-retail communication*.
- (5) If a communication relates to a *firm's business that is not MiFID or equivalent third country business*, this section does not apply:
  - (a) to the extent that it is an *excluded communication*;
  - (b) to the extent that it is a prospectus advertisement to which article 22 of the *Prospectus Regulation* applies;
  - (c) if it is *image advertising*;
  - (d) if it is a *non-retail communication*;
  - (e) [deleted]
  - (f) to the extent that it relates to a *pure protection contract that is a long-term care insurance contract*.

**4.11.1A** G A *MiFID investment firm, third country investment firm or MiFID optional exemption firm* should refer to the requirements on record keeping in the *MiFID Org Regulation* and ■ SYSC 9.

**4.11.2** G A *firm* should consider maintaining a record of why it is satisfied that the *financial promotion* complies with the *financial promotion rules*.

**4.11.3** G If the *financial promotion* includes market information that is updated continuously in line with the relevant market, the record-keeping *rules* do not require a *firm* to record that information.