

## Chapter 4

# Communicating with clients, including financial promotions

## 4.11 Record keeping: financial promotion

### General

#### 4.11.1

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- (1) A *firm* must make an adequate record of any *financial promotion*:
  - (a) it *communicates*;
  - (b) it *approves*; or
  - (c) of which it confirms compliance (■ COBS 4.10.9AR(3)(a)), 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) [deleted] [*Editor's note*: This provision now appears with minor amendments at COBS 4.11.4R]
- (2B) In respect of each *financial promotion* in (1), a *firm* must make an adequate record demonstrating how it has satisfied itself that it has the necessary competence and expertise required by ■ COBS 4.10.9AR.
- (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.

#### **Promotions of restricted mass market investments and non-mass market investments**

**4.11.4** R If a *firm communicates or approves a financial promotion* which relates to a *non-mass market investment* where that *financial promotion* is addressed to or disseminated in such a way that it is likely to be received by a *retail client*:

- (1) 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 promotion complies with the restrictions set out in section 238 of the *Act* and in ■ **COBS 4.12B**, as applicable;
- (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 *communication or approval* of the promotion;
- (3) as part of the record required in (1), the *firm* must make a record of which exemption was relied on for the purposes of the promotion, together with the reason why the *firm* is satisfied that that exemption applies;
- (4) where the *firm* relies on an exemption that requires investor certification and warnings to investors, the record required in (1) 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;
- (5) if the *rules* in ■ **COBS 4.12B** do not apply because the promotion is an *excluded communication* (■ **COBS 4.12B.4R**), the *firm* must identify in

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the record required in (1) which type of *financial promotion* defined as an *excluded communication* corresponds to the promotion 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 promotion, together with the reason why the *firm* is satisfied that the exemption applies.

- (1) This rule applies to a *firm* that *communicates* or may *communicate* a *direct offer financial promotion* in relation to a *restricted mass market investment* to which ■ COBS 4.12A.15R applies.
- (2) A *firm* must make an adequate record of:
  - (a) the categorisation of each *retail client* (■ COBS 4.12A.21R) and the evidence obtained in support of that categorisation;
  - (b) where an appropriateness assessment is undertaken (■ COBS 4.12A.28R):
    - (i) the total number of assessments undertaken;
    - (ii) the number of assessments resulting in a determination that the *investment* was appropriate;
    - (iii) the number of assessments resulting in a determination that the *investment* was not appropriate;
    - (iv) in respect of each *retail client*, the outcome of the appropriateness process; and
    - (v) in respect of each *retail client*, the number of times that *retail client* was subject to an appropriateness assessment in respect of the same *investment*.

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A *firm* that approves a *direct offer financial promotion* in relation to a *restricted mass market investment* to which ■ COBS 4.12A.15R applies must take reasonable steps to ensure that:

- (1) adequate records of the information required by ■ COBS 4.11.5R are made in connection with the *communication* of the *direct offer financial promotion*; and
- (2) the *firm* is provided with, or otherwise has ready access to, the records in (1).

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A *firm* must retain the records required by ■ COBS 4.11.4R and ■ COBS 4.11.5R for 5 years.

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Where a *firm* is required by ■ COBS 4.12A.44R(2)(b) or ■ COBS 4.12B.13R(2)(b) to maintain a record of its grounds for using an alternative form of risk summary, it must retain the record of its decision for 5 years.