

Chapter 4

Communicating with clients, including financial promotions

4.12B Promotion of non-mass market investments

Application

- 4.12B.1** **R** This section applies to:
- (1) *firms*;
 - (2) *TP firms*, to the extent that this section does not already apply to those *TP firms* as a result of ■ GEN 2.2.26R; and
 - (3) *Gibraltar-based firms*, to the extent that this section does not already apply to such a *Gibraltar-based firm* as a result of ■ GEN 2.3.1R,
- when *approving or communicating financial promotions* in relation to *non-mass market investments*.
- 4.12B.2** **G** In addition to the *persons* listed in ■ COBS 4.12B.1R, *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*.
- 4.12B.3** **R** Throughout this section, references to a *firm* include a *TP firm* and a *Gibraltar-based firm*.
- 4.12B.4** **R** This section does not apply to:
- (1) *excluded communications*; or
 - (2) *financial promotions* to the extent that they relate to *local authority securities*.

Purpose and overview of the rules

4.12B.5

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- (1) The *rules* in this section are intended to ensure that *financial promotions* relating to *non-mass market investments* are not *communicated* to ordinary retail investors. They do not apply to *excluded communications*, to *financial promotions* to the extent that they relate to *local authority securities* or to *financial promotions* insofar as they are directed at *clients* other than *retail clients*.
- (2) The *rules* in this section reflect the often complex and high-risk nature of *non-mass market investments*.
- (3) The *rules* in this section therefore restrict *firms* from *approving* or *communicating financial promotions* in relation to *non-mass market investments* which are addressed to, or disseminated in such a way that they are likely to be received by, a *retail client*, subject to certain exemptions.
- (4) The exemptions referred to in (3) are set out in ■ COBS 4.12B.7R(5).
- (5) (a) *Firms* must also comply with ■ COBS 4.12B.7R(1)(b) and the *rules* in ■ COBS 4.12B.14R to ■ COBS 4.12B.30R (see (b) below) where:
 - (i) the *financial promotion* relates to a *non-mass market investment*; and
 - (ii) the *firm* wishes to rely on exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors).
- (b) ■ COBS 4.12B.7R(1)(b) and ■ COBS 4.12B.14R to ■ COBS 4.12B.31G cover:
 - (i) preliminary assessment of suitability (in relation to exemptions 9 and 11);
 - (ii) personalised risk warning, risk summary and cooling off period;
 - (iii) risk warnings; and
 - (iv) monetary and non-monetary incentives.
- (5A) ■ COBS 4.12B.17R requires that a *financial promotion* which relates to a *non-mass market investment* does not offer to any *retail client* any form of incentive. The purpose of this *rule* is to ensure that retail clients are not persuaded or incited to *engage in investment activity* relating to a *non-mass market investment* other than by reference to the features of the investment activity that is the subject of the *financial promotion*.
- (6) Where the *financial promotion* relates to a *speculative illiquid security*, *firms* must also comply with ■ COBS 4.12B.32R, ■ COBS 4.12B.33R and ■ COBS 4.12B.35R which relate to the disclosure of costs, charges and commission.
- (7) The table below explains how the *rules* apply and to which *non-mass market investments* the *rules* apply, after the provisions in ■ COBS 4.12B.4R have been applied.

Handbook provision	Description of the provision	Which investments does the provision apply to	When does the provision apply
COBS 4.12B.6R	<i>Firms must not communicate or approve financial promotions in relation to non-mass market investments to retail clients</i>	All non-mass market investments other than units in unregulated collective investment schemes	At all times.
COBS 4.12B.7R(1)(b)	<i>Firms must carry out a preliminary assessment of suitability</i>	All non-mass market investments	Before the financial promotion is communicated to a certified high net worth investor or self-certified sophisticated investor in reliance on the relevant exemption in COBS 4.12B.7R(5)
COBS 4.12B.14R and COBS 4.12B.15R	<i>Firms must ensure that a personalised risk warning and summary of the risks is made available to the client and a period of at least 24 hours (the 'cooling off period') is applied before the financial promotion is communicated</i>	All non-mass market investments except for securities in a closed-ended investment fund (i) applying for, or with, a premium listing and (ii) which complies with the requirements of LR 15	Before the financial promotion is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)
COBS 4.12B.17R	<i>Restrictions on monetary and non-monetary benefits being included within the financial promotions</i>	All non-mass market investments	At the time the financial promotion is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)
COBS 4.12B.20R, COBS 4.12B.21R, COBS 4.12B.24R, and COBS 4.12B.26R	<i>Firms must ensure that a risk warning is provided to the client</i>	All non-mass market investments except for securities in a closed-ended investment fund (i) applying for, or with, a	At the time the financial promotion is communicated to a certified high net worth investor, self-certified

Handbook provision	Description of the provision	Which investments does the provision apply to	When does the provision apply
COBS 4.12B.32R, COBS 4.12B.33R, and COBS 4.12B.35R	<i>Firms</i> must ensure that statements disclosing all costs, charges and commission are provided to the <i>client</i>	<i>premium listing</i> ; and (ii) which complies with the requirements of LR 15 Only <i>speculative illiquid securities</i>	sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5) At the time the <i>financial promotion</i> is communicated to a certified high net worth investor, self-certified sophisticated investor or certified sophisticated investor, in reliance on the relevant exemption in COBS 4.12B.7R(5)

(8) There is *guidance* in ■ COBS 4.12B.43G to ■ 4.12B.45G on the application of the exemptions set out in the table in ■ COBS 4.12B.7R(5).

Promotion of non-mass market investments

4.12B.6 **R**

- (1) A *firm* must not *communicate* or *approve* 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*.
- (2) The restriction in (1) is subject to ■ COBS 4.12B.7R and does not apply to *units* in *unregulated collective investment schemes*, which are subject to a statutory restriction on promotion in section 238 of the *Act*.

Exemptions from the restrictions on the promotion of non-mass market investments

4.12B.7 **R**

- (1) The restriction in ■ COBS 4.12B.6R does not apply if the following conditions are met:
 - (a) the *financial promotion* falls within an applicable exemption in the first column in the table in (5) because either:
 - (i) it is made to, or directed at, only those recipients whom the *firm communicating* the *financial promotion* has taken reasonable steps to establish are *persons* in the second column of the table; or
 - (ii) the *firm approving* the *financial promotion* has taken reasonable steps to establish that the *financial promotion* will be made to, or directed at, only those recipients who are *persons* in the second column of the table;

- (b) where the third column of the table refers to the need for a preliminary assessment of suitability, that assessment is undertaken before the *financial promotion* is made to or directed at the recipient;
 - (c) the *firm* complies with the relevant *rules* in ■ COBS 4.12B.14R to ■ 4.12B.35R relating to the use of exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors), as provided by ■ COBS 4.12B.7R(5).
- (2) For the purposes of ■ COBS 4.12B.7R(1)(a), a *firm* will have taken reasonable steps to establish that the recipients of the *financial promotion* are *persons* in the second column of the table where the *firm* has:
- (a) obtained the relevant completed certificate from the *retail client*; and
 - (b) satisfied itself that the *retail client's* completion of the certificate evidences that the *retail client* meets the criteria to be certified as such.
- (3) Where a *firm* approves or communicates a *financial promotion* the preliminary assessment of suitability required by ■ COBS 4.12B.7R(1)(b) must be undertaken by that *firm*.
- (4) A *firm* may rely on more than one exemption in relation to the same *financial promotion*.

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
Exemptions applicable to promotions of non-mainstream pooled investments only:		
1. Replacement products and rights issues	A <i>person</i> who already participates in, owns, holds rights to or interests in, a <i>non-mainstream pooled investment</i> that is being liquidated or wound down or which is undergoing a rights issue. [See Note 1.]	1. A <i>non-mainstream pooled investment</i> which is intended by the operator or manager to absorb or take over the assets of that <i>non-mainstream pooled investment</i> , or which is being offered by the operator or manager of that <i>non-mainstream pooled investment</i> as an alternative to cash on its liquidation; or 2. <i>Securities</i> offered by the existing <i>non-mainstream pooled investment</i> as part of a rights issue.
2. Enterprise and charitable funds	A <i>person</i> who is eligible to participate or invest in an arrangement constituted under: (1) the Church Funds Investment Measure 1958 (available at	Any <i>non-mainstream pooled investment</i> which is such an arrangement.

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
	<p>www.legislation.gov.uk/ukcm/Eliz2/6-7/1/2014-01-01);</p> <p>(2) section 96 or 100 of the Charities Act 2011 (available at www.legislation.gov.uk/ukpga/2011/25/2014-01-01);</p> <p>(3) section 25 of the Charities Act (Northern Ireland) 1964 (available at www.legislation.gov.uk/apni/1964/33/section/25/2014-01-01);</p> <p>(4) the Regulation on European Venture Capital Funds ('EuVECA') or the <i>RVECA Regulation</i> ('RVECA'); or</p> <p>(5) the Regulation on European Social Entrepreneurship Funds ('EuSEFs') or the <i>SEF Regulation</i> ('SEFs').</p>	

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
3. Eligible employees	An eligible <i>employee</i> , that is, a <i>person</i> who is: (1) an officer; (2) an <i>employee</i> ; (3) a former officer or <i>employee</i> ; or (4) a member of the immediate family of any of (1) – (3), of an employer which is (or is in the same <i>group</i> as) the <i>firm</i> , or which has accepted responsibility for the activities of the <i>firm</i> in carrying out the <i>designated investment business</i> in question.	1. A <i>non-mainstream pooled investment</i> , the instrument constituting which: A. restricts the property of the <i>non-mainstream pooled investment</i> , apart from cash and near cash, to: (1) (where the employer is a company) <i>shares</i> in and <i>debentures</i> of the <i>company</i> or any other connected <i>company</i> ; [See Note 2.] (2) (in any case), any property, provided that the <i>non-mainstream pooled investment</i> takes the form of: (i) a limited <i>partnership</i> , under the terms of which the employer (or connected <i>company</i>) will be the unlimited partner and the eligible employees will be some or all of the limited partners; or (ii) a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than charges) for <i>investment</i> transactions earlier entered into, which the eligible <i>employee</i> was not aware of at the time he entered into them; and B. (in a case falling within A(1) above) restricts participation in the <i>non-mainstream pooled investment</i> to eligible <i>employees</i> , the employer and any connected <i>company</i> . 2. Any <i>non-mainstream pooled investment</i> , provided that the participation of eligible employees is to facilitate their co-investment: (i) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer); or (ii) with one or more <i>clients</i> of such a <i>company</i> .
4. Members of the Society of Lloyd's	A <i>person</i> admitted to membership of the Society of Lloyd's or any <i>person</i> by law entitled or bound to administer his affairs.	A <i>scheme</i> in the form of a limited <i>partnership</i> which is established for the sole purpose of underwriting <i>insurance business</i> at Lloyd's.
5. Exempt Persons	An exempt <i>person</i> (other than a <i>person</i>	Any <i>non-mainstream pooled investment</i> .

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
	<p>exempted only by section 39 of the Act (Exemption of appointed representatives) (available at www.legislation.gov.uk/ukpga/2000/8/section/39/2014-01-01) if the <i>financial promotion</i> relates to a <i>regulated activity</i> in respect of which the person is exempt from the <i>general prohibition</i>.</p>	
6. Non-retail clients	An <i>eligible counterparty</i> or a <i>professional client</i> .	Any <i>non-mainstream pooled investment</i> in relation to which the <i>client</i> is categorised as a <i>professional client</i> or <i>eligible counterparty</i> . [See Note 4.]
7. Solicited advice	Any <i>person</i> .	<p>Any <i>non-mainstream pooled investment</i>, provided the communication meets all of the following requirements:</p> <p>(a) the communication only amounts to a <i>financial promotion</i> because it is a <i>personal recommendation</i> on a <i>non-mainstream pooled investment</i>;</p> <p>(b) the <i>personal recommendation</i> is made following a specific request by that <i>client</i> for advice on the merits of investing in the <i>non-mainstream pooled investment</i>; and</p> <p>(c) the <i>client</i> has not previously received a <i>financial promotion</i> or any other communication from the <i>firm</i> (or from a <i>person</i> connected to the <i>firm</i>) which is intended to influence the <i>client</i> in relation to that <i>non-mainstream pooled investment</i> [See Note 3.]</p>
8. US persons	A <i>person</i> who is classified as a United States person for tax purposes under United States legislation or	Any investment <i>company</i> registered and operated in the United States under the Investment Company Act 1940.

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
	who owns a US qualified retirement plan.	
	Exemptions applicable to promotions of all non-mass market investments:	
9. Certified high net worth investor	An individual who meets the requirements set out in COBS 4.12B.38R or a <i>person</i> (or <i>persons</i>) legally empowered to make investment decisions on behalf of such an individual.	Any <i>non-mass market investment</i> the <i>firm</i> considers is likely to be suitable for that individual, based on a preliminary assessment of the <i>client's</i> profile and objectives. [See COBS 4.12B.9G(2).]
10. Certified sophisticated investor	An individual who meets the requirements set out in COBS 4.12B.39R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another <i>person</i> who is the <i>firm's client</i> .	Any <i>non-mass market investment</i> .
11. Self-certified sophisticated investor	An individual who meets the requirements set out in COBS 4.12B.40R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another <i>person</i>	Any <i>non-mass market investment</i> the <i>firm</i> considers is likely to be suitable for that individual, based on a preliminary assessment of the <i>client's</i> profile and objectives. [See COBS 4.12B.9G(2)].

Title of Exemption	Promotion to:	Promotion of non-mass market investment which is:
	who is the <i>firm's client</i> .	
	The following Notes explain certain words and phrases used in the table above.	
Note 1	Promotion of <i>non-mainstream pooled investments</i> to a category of person includes any nominee company acting for such a person.	
Note 2	A <i>company</i> is 'connected' with another <i>company</i> if: they are both in the same <i>group</i> ; or one <i>company</i> is entitled, either alone or with another <i>company</i> in the same <i>group</i> , to exercise or control the exercise of a majority of the voting rights attributable to the <i>share</i> capital, which are exercisable in all circumstances at any general meeting of the other <i>company</i> or of its <i>holding company</i> .	
Note 3	A <i>person</i> is connected with a <i>firm</i> if it acts as an <i>introducer</i> or <i>appointed representative</i> for that <i>firm</i> or if it is any other <i>person</i> , regardless of <i>authorisation</i> status, who has a relevant business relationship with the <i>firm</i> .	
Note 4	In deciding whether a promotion is permitted under the rules of this section or under section 238 of the <i>Act</i> , <i>firms</i> may use the client categorisation regime that applies to business other than <i>MiFID</i> or <i>equivalent third country business</i> . (This is the case even if the <i>firm</i> will be carrying on a <i>MiFID</i> activity at the same time as or following the promotion.)	

4.12B.8 R A *firm* may communicate an invitation or inducement to participate in an *unregulated collective investment scheme* without breaching the restriction on promotion in section 238 of the *Act* if the promotion falls within an exemption in the table in ■ COBS 4.12B.7R(5) and is in accordance with ■ COBS 4.12B.7R(1).

Advice and preliminary assessment of suitability

4.12B.9 G

(1) Where a *firm* communicates any promotion of a *non-mass market investment* in the context of advice, it should have regard to and comply with its obligations under ■ COBS 9 or ■ 9A (as applicable). *Firms* should also be mindful of the appropriateness requirements in ■ COBS 10 and ■ 10A which apply to a wide range of non-advised services.

(2) (a) The effect of ■ COBS 4.12B.7R(1)(b) is that where a *firm* wishes to rely on exemptions 9 (certified high net worth investors) or 11 (self-certified sophisticated investors), as provided by ■ COBS 4.12B.7R(5), the preliminary assessment of suitability must be undertaken before promotion of the *non-mass market investment* is made to or directed at *clients* (in addition to other requirements). Where a *firm* approves or communicates a financial promotion the preliminary assessment of suitability must be undertaken by that *firm* as required by ■ COBS 4.12B.7R(3).

- (b) There is no duty to communicate the preliminary assessment of suitability to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the rules in ■ COBS 9 or ■ 9A (as applicable) on suitability.
- (c) The requirement for a preliminary assessment of suitability does not extend to a full suitability assessment, unless advice is being offered in relation to the *non-mass market investment* being promoted, in which case the requirements in ■ COBS 9 or ■ 9A apply (as applicable). However, it requires that the *firm* takes reasonable steps to acquaint itself with the *client's* profile and objectives in order to ascertain whether the *non-mass market investment* under contemplation is likely to be suitable for that *client*. The *firm* should not promote the *non-mass market investment* to the *client* if it does not consider it likely to be suitable for that *client* following such preliminary assessment.

Promotions to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors

4.12B.10 R

- (1) ■ COBS 4.12B.10R to ■ COBS 4.12B.31G apply to *financial promotions* which:
 - (a) relate to *non-mass market investments* ; and
 - (b) are *communicated*, or are to be *communicated*, to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors for the purposes of the exemptions in ■ COBS 4.12B.7R(5).
- (2) A *firm* may only rely on exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors) to:
 - (a) *communicate a financial promotion* to which this rule applies if the *firm* has complied with the rules in ■ COBS 4.12B.14R to ■ COBS 4.12B.35R, as appropriate; or
 - (b) *approve for communication a financial promotion* to which this rule applies if the *firm* is satisfied that the rules in ■ COBS 4.12B.14R to ■ COBS 4.12B.35R, as appropriate, will be satisfied in relation to each *communication* of the *financial promotion*.
- (3) The conditions in ■ COBS 4.12B.14R (personalised risk warning) and ■ COBS 4.12B.15R (cooling off period) do not need to be satisfied if the *retail client* has previously received a *financial promotion* relating to a *non-mass market investment* from the same *person* as would otherwise need to satisfy them.

4.12B.11 G

Where a *firm* is relying on exemptions 9 (certified high net worth investors), 10 (certified sophisticated investors) or 11 (self-certified sophisticated investors), in accordance with ■ COBS 4.12B.7R(1)(a), it must first take reasonable steps to establish that the *retail client* falls into one of those categories and then the *firm* must undertake a preliminary assessment of suitability in accordance with ■ COBS 4.12B.7R(1)(b), where relevant. Once a *firm* has completed these steps, it must comply with the rules in ■ COBS 4.12B.14R to ■ COBS 4.12B.35R.

4.12B.12 **G** The effect of **■ COBS 4.12B.10R(3)** and related provisions in this section is that a personalised risk warning and cooling off period are only required on the first occasion that a *firm*, or other *person communicating a financial promotion, communicates a financial promotion* relating to a *non-mass market investment* to a particular *retail client*.

Risk summaries

4.12B.13 **R** Where a *rule* in this section requires a *firm* to communicate a risk summary selected from **■ COBS 4 Annex 1R**, the *firm* must either:

- (1) provide the risk summary as it appears in **■ COBS 4 Annex 1R**; or
- (2) provide a version of the risk summary in **■ COBS 4 Annex 1R** in appropriately amended form, provided that:
 - (a) the *firm* has a valid reason for each amendment;
 - (b) the *firm* makes a record of each amendment and the reason for it;
 - (c) any alternative or additional text is in plain English; and
 - (d) the amended risk summary does not take longer than around 2 minutes to read.

4.12B.13A **G** For the purposes of **■ COBS 4.12B.13R(2)**, the following reasons are considered to be valid:

- (1) the relevant part of the risk summary in **■ COBS 4 Annex 1R** would be misleading in relation to the particular *investment*;
- (2) the relevant part of the risk summary in **■ COBS 4 Annex 1R** would be irrelevant in relation to the particular *investment*;
- (3) the risk summary in **■ COBS 4 Annex 1R** does not include a risk that is relevant to the particular *investment*, and it is appropriate for that further risk to be included;
- (4) the sole purpose of the relevant statement in the risk summary is to include a hyperlink to a webpage and the medium of communication does not permit the incorporation of a link.

This list is not exhaustive.

Prior conditions for communication to certified high net worth investors, certified sophisticated investors or self-certified sophisticated investors

4.12B.14 **R** (1) The first condition is that before *communicating the financial promotion*, the *firm*, or other *person communicating the financial promotion*:

- (a) obtains the *retail client's* full name; and
- (b) having obtained the *retail client's* name, communicates to that *retail client* the following personalised risk warning:

[Client name], this is a high-risk investment. How would you

feel if you lost the money you're about to invest? [Take 2 mins to learn more.](#)

- (2) If the *financial promotion* is, or is to be, *communicated* by means of a website, mobile application or other digital medium, the personalised risk warning in (1)(b) must:
 - (a) be clearly brought to the *retail client's* attention by means of a pop-up box (or equivalent);
 - (b) include a link which, when activated, delivers an appropriate risk summary in a further pop-up box (or equivalent):
 - (i) relating to the type of *non-mass market investment* that is the subject of the *financial promotion*; and
 - (ii) selected from ■ COBS 4 Annex 1R; and
 - (c) be accompanied by an invitation to the *retail client* to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *financial promotion*.
- (3) If the *financial promotion* is, or is to be, *communicated* other than by means of a website, mobile application or other digital medium:
 - (a) the personalised risk warning in (1)(b) must be:
 - (i) provided to the *retail client* omitting the words "Take 2 mins to learn more"; and
 - (ii) accompanied by an appropriate risk summary in a *durable medium* relating to the type of *non-mass market investment* that is the subject of the *financial promotion* selected from ■ COBS 4 Annex 1R; and
 - (b) the *retail client* must then be invited to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *financial promotion*.
- (4) The options in 2(c) and (3)(b) must be presented with equal prominence.
- (5) The condition is only satisfied if the *retail client* specifies that they wish to continue to receive the *financial promotion*.
- (6) This *rule* does not apply to a *financial promotion* of a *closed-ended investment fund* applying for, or with, a *premium listing* and which complies with the requirements of ■ LR 15.
- (7) The personalised risk warning required by (2)(a) and the risk summary required by (2)(b) must comply with ■ COBS 4.12B.28R and ■ COBS 4.12B.30R.
- (8) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12B.24R and ■ COBS 4.12B.26R.

- 4.12B.15** **R**
- (1) The second condition applies if a *retail client* requests to view a *financial promotion* of a *non-mass market investment* (including of a *security* in a *closed-ended investment fund* applying for, or with, a *premium listing* and which complies with the requirements of **LR 15**).
 - (2) The second condition is that, before *communicating* the *financial promotion*, the *firm* or other *person communicating* the *financial promotion*:
 - (a) allows a period of at least 24 hours (the 'cooling off period') to elapse;
 - (b) following the lapse of time in (a), invites the *retail client* to specify whether they wish to:
 - (i) leave the investment journey; or
 - (ii) continue to receive the *financial promotion*; and
 - (c) the *retail client* specifies that they wish to continue to receive the *financial promotion*.
 - (3) The options in (2)(b) must be presented with equal prominence.

4.12B.16 **G** **■** COBS 4.12B.15R does not prevent the *person* who is subject to it from engaging with the *retail client* during the cooling off period. This includes for the purposes of providing the *client* with the personalised risk warning required by **COBS 4.12B.14R** and obtaining the information necessary to undertake the preliminary assessment of suitability required by **COBS 4.12B.7R(1)(b)**.

Restrictions on monetary and non-monetary incentives

- 4.12B.17** **R**
- (1) A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *non-mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive.
 - (2) The *rule* in (1) does not apply to a product or service produced or provided by the *person*, or a member of the *group* of the *person*, who will benefit from the proceeds of the investment.
 - (3) The *rule* in (1) does not apply where the incentive is:
 - (a) offered for the exclusive purpose of encouraging a *retail client* to transfer their existing holding of one or more *non-mass market investments* from an existing arrangement with one *person* to a different arrangement with another *person*; and
 - (b) not structured in such a way as to encourage further investment in any *non-mass market investment*.

4.12B.18 **G** For the purposes of **COBS 4.12B.17R** monetary and non-monetary incentives include, but are not limited to:

- (1) offering bonuses when investing in a *non-mass market investment*;
- (2) offering bonuses where the *client* refers another *person*;
- (3) offering cashback when investing in a *non-mass market investment*;

4.12B.19 G

- (4) offering discounts or rebates on fees paid that are linked to volumes of trades made in *non-mass market investments*;
- (5) offering free gifts once an investment in a *non-mass market investment* has been made such as laptops or mobile telephones; or
- (6) offering any additional free *investments* or offering discounts on *investments*.

4.12B.19A G

Subject to ■ **COBS 4.12B.18G** and ■ **COBS 4.12B.19G**, the following factors are relevant in determining whether a benefit is an incentive:

- (1) A benefit which is intrinsically connected with the *investment* or investment activity that is the subject of the *financial promotion* is unlikely to constitute an incentive – for example, voting rights which are carried by a share. However, a benefit which is entirely separable from the *investment* or investment activity that is the subject of the *financial promotion* is likely to be an incentive.
- (2) A benefit which is only available for a fixed period of time, or is contingent upon investing in a *non-mass market investment* in the future, is likely to constitute an incentive. This would not include, for example, a benefit which is offered in connection with a specified event such as the first close of an investment.
- (3) A benefit which is only available to *retail clients* who invest through a particular medium is likely to constitute an incentive – for example, a benefit which is only offered to *retail clients* who invest via a social media link.

4.12B.19B G

- (1) ■ **COBS 4.12B.17R** applies irrespective of the nature of the investment activity. This means that the *rule* applies not only in relation to incentives to *buy non-mass market investments* but also, for example, to incentives to enter into agreements for the purposes of transacting in *non-mass market investments*.
- (2) The rationale for offering the incentive is immaterial. This means that the *rule* applies to incentives which are intended, for example, to encourage *retail clients* to make investments ahead of the end of the tax year.

Risk warning to be included in the financial promotion

4.12B.20 R A firm must not communicate or approve a financial promotion which relates to a non-mass market investment unless it contains a risk warning that complies with ■ COBS 4.12B.21R.

4.12B.21 R (1) For the purposes of ■ COBS 4.12B.20R the financial promotion must contain the following risk warning:

Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment and you are unlikely to be protected if something goes wrong.

(2) Where the number of characters contained in the risk warning in (1) exceeds the number of characters permitted by a third-party marketing provider, the following risk warning must be used:

Don't invest unless you're prepared to lose all the money you invest.

(3) Where the financial promotion is, or is to be, communicated by way of a website, mobile application or other digital medium:

(a) the risk warning in (1) or (2) must also include a link:

(i) in the form of the text: Take 2 mins to learn more; and

(ii) which, when activated, delivers an appropriate risk summary in a pop-up box (or equivalent) relating to the type of non-mass market investment that is the subject of the financial promotion selected from ■ COBS 4 Annex 1R;

(b) the link required by (3)(a) need not be:

(i) in the form required by 3(a)(i) if the inclusion of that additional text would exceed the number of characters permitted by a third-party marketing provider;

(ii) provided if the medium of communication does not allow the incorporation of a link.

(4) Where the financial promotion is communicated other than by way of a website, mobile application or other digital medium (and including where the financial promotion is a real time financial promotion), the risk warning in (1) must be:

(a) provided:

(i) in a durable medium; or

(ii) if the medium of communication means that the risk warning cannot be provided in a durable medium, in a manner appropriate to the medium of communication; and

(b) however the financial promotion is communicated, accompanied by an appropriate risk summary in a durable medium relating to the type of non-mass market investment that is the subject of the financial promotion selected from ■ COBS 4 Annex 1R.

(5) (a) A firm must omit the words "and you are unlikely to be protected if something goes wrong" from the risk warning required by (1) if the conditions in (b) apply.

- (b) The conditions are that:
 - (i) the *financial promotion* relates to an *investment*:
 - (A) that is issued by; or
 - (B) the provision of which involves a,
 - participant firm* or an *appointed representative* of a *participant firm*; and
 - (ii) the activity of the *person* in (i) is of a type that could give rise to a *protected claim*.
 - (c) A *firm* that omits the words in (a) must make a record of the basis on which the conditions in (b) are met.
- (6) This *rule* does not apply to a *financial promotion* of a *closed-ended investment fund* applying for, or with, a *premium listing* and which complies with the requirements of ■ LR 15.
 - (7) The risk warning required by (1) or (2) and the risk summary required by (4)(b) must comply with ■ COBS 4.12B.24R and ■ COBS 4.12B.26R.
 - (8) The risk summary required by (3)(a)(ii) must comply with ■ COBS 4.12B.28R and ■ COBS 4.12B.30R.

4.12B.22 G

- (1) Reference in ■ COBS 4.12B.21R(5)(b)(i)(B) to the ‘provision’ of an *investment* is to a *person* developing, managing or packaging an *investment* such as an *operator*. It does not refer to *persons* involved in distributing, or intermediating the sale of, an *investment* such as a financial adviser or a *person arranging investments*.
- (2) A *firm* relying on ■ COBS 4.12B.21R(5) should consider obtaining external legal advice (from legal advisers with relevant expertise and experience) on the appropriateness of omitting the words in that *rule* from a risk warning. Any such advice should be recorded as part of the *firm’s* compliance with ■ COBS 4.12B.21R(5)(c).

4.12B.23 G

Even where it is not possible to provide a risk warning in a *durable medium* (for example, because the *financial promotion* is a *real time financial promotion*), the recipient of the *financial promotion* must still be provided with an appropriate risk summary in a *durable medium* at or around the time that the *financial promotion* is *communicated* (■ COBS 4.12B.21R(4)).

Requirements of risk warnings and non-digital risk summaries

4.12B.24 R

- (1) The relevant risk warning in ■ COBS 4.12B.21R(1) or ■ (2) and the relevant risk summaries in ■ COBS 4.12B.14R(3)(a)(ii) and ■ COBS 4.12B.21R(4)(b) must:
 - (a) be prominent, taking into account the content, size and orientation of the *financial promotion* as a whole;
 - (b) except where the risk warning cannot be provided in writing, be clearly legible, contained within its own border and with bold and underlined text as indicated in ■ COBS 4.12B.21R or ■ COBS 4 Annex 1R.

- (2) The relevant risk warning in ■ COBS 4.12B.21R(1) or ■ (2) must, if the *financial promotion* is, or is to be, *communicated* by means of a website or mobile application:
- (a) be statically fixed and visible at the top of the screen, below anything else that also stays static, even when the *retail client* scrolls up or down the webpage; and
 - (b) be included as described in (a) on each linked webpage on the website or page on the application relating to the *non-mass market investment*.

4.12B.25 **G** The FCA expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing how the risk warning will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>

4.12B.26 **R** The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the risk warning or risk summary.
[Note: The FCA has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]

4.12B.27 **G** For the purposes of ■ COBS 4.12B.26R, design features which might reduce the visibility or prominence of a risk warning or risk summary include, but are not limited to:

- (1) using a font size for the risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
- (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *client* to read the text;
- (3) fading the text of the risk warning or risk summary;
- (4) placing the risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
- (5) requiring additional links to be clicked in order for the full text of the risk warning to be seen;
- (6) using a font or background in the risk warning or risk summary in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and
- (7) using a font or background in the risk warning or risk summary in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the risk warning or risk summary from other forms of information.

Requirements of digital personalised risk warnings and digital risk summaries

- 4.12B.28 **R** The relevant personalised risk warning in ■ COBS 4.12B.14R(2) and the relevant risk summaries in ■ COBS 4.12B.14R(2)(b) and ■ COBS 4.12B.21R(3)(a)(ii) must be:
- (1) prominently brought to the *retail client's* attention, taking into account the content, size and orientation of the *financial promotion* as a whole;
 - (2) clearly legible, contained within its own border and with bold and underlined text as indicated in ■ COBS 4.12B.14R(1)(b) and ■ COBS 4 Annex 1R;
 - (3) statically fixed and visible in the middle of the screen; and
 - (4) the main focus of the screen.
- 4.12B.29 **G** The FCA expects *firms* to take account of the latest version of the international Web Content Accessibility Guidelines (WCAG) accessibility standard when designing how the personalised risk warning or risk summary will be displayed: <https://www.w3.org/WAI/WCAG21/quickref/>
- 4.12B.30 **R** The *financial promotion* must not contain any design feature which has the intent or effect of reducing the visibility or prominence of the personalised risk warning or risk summary.
[Note: The FCA has also issued non-Handbook guidance on prominence in financial promotions. See <https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>]
- 4.12B.31 **G** For the purposes of ■ COBS 4.12B.30R, design features which might reduce the visibility or prominence of a personalised risk warning or risk summary include, but are not limited to:
- (1) using a font size for the personalised risk warning or risk summary that is smaller than the standard size used in the *financial promotion*;
 - (2) using a background colour that does not sufficiently contrast the text or makes it difficult for the *retail client* to read the text;
 - (3) fading the text of the personalised risk warning or risk summary;
 - (4) placing the personalised risk warning or risk summary at the bottom of the promotion or embedding it within other standard information, for example legal information or the *firm's* contact details;
 - (5) requiring additional actions to be taken by the *retail client*, such as requiring additional links to be clicked in order for the full text of the personalised risk warning or risk summary to be seen;
 - (6) using a font or background in the risk warning in the same colours as the *firm's* brand, or using a font or background in the same colours as the rest of the *financial promotion*; and

- (7) using a font or background in the risk warning in the same colour as other forms of disclosure and standard information; the colour of the font and background should distinguish the personalised risk warning or risk summary from other forms of information.

Further requirement to include a statement of costs, charges and commission where the financial promotion relates to speculative illiquid securities

4.12B.32 **R** A firm must not communicate or approve a financial promotion which relates to a *speculative illiquid security* to, or for communication to, a *retail client* unless it contains statements that comply with **COBS 4.12B.33R**.

4.12B.33 **R** For the purposes of **COBS 4.12B.32R**, the *financial promotion* must contain:

- (1) a statement which expresses as a percentage the total amount of the capital raised by the issue of the *speculative illiquid security* which will be paid out in costs, fees, charges and commissions and other expenses to any third party;
- (2) a statement which expresses as a cash sum the percentage referred to in (1) above; and
- (3) in addition to the statements in (1) and (2) above, a statement which provides a breakdown of the actual or potential expenditure to be paid out of an investor's capital and details of the third party (or parties) who will receive it.

4.12B.34 **G**

- (1) There is an illustration of how a *firm* should comply with **COBS 4.12B.33R(2)** in (2) below.
- (2) Where a *firm* pays 30% of the total amount of capital raised by the issue of *speculative illiquid securities* towards costs, fees, charges and commissions and other expenses to any third party, the statement should say: **"For every £100 you invest, £30 will be paid to third parties to meet costs, fees, charges and commissions."**

4.12B.35 **R** The statements providing the percentage figure in **COBS 4.12B.33R(1)** and the cash sum in **COBS 4.12B.33R(2)** must:

- (1) be prominent;
- (2) be contained together within their own border and with bold text;
- (3) immediately follow the most prominent reference to the expected return on the *speculative illiquid security*; and
- (4) be published so that they are clearly legible against a neutral background.

4.12B.36 **G** The statement providing the breakdown of expenditure in **COBS 4.12B.33R(3)** should be included in the *financial promotion* in a clear and prominent way.

4.12B.37 **G** The purpose of the statements required by **■ COBS 4.12B.33R** is to enable an investor to consider the proportion of capital raised by an issue of a *speculative illiquid security* that will not be invested. This information should help the investor to assess the risk that the *issuer* will be unable to pay any advertised interest payments, other income or otherwise to repay the investor's capital at maturity.

Definition of sophisticated and high net worth investors.....

4.12B.38 **R** A certified high net worth investor is an individual who has completed and signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the terms set out in **■ COBS 4 Annex 2R**, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

4.12B.39 **R** A certified sophisticated investor is an individual:

- (1) who has a written certificate signed within the last 36 *months* by a *firm* confirming they have been assessed by that *firm* as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in *non-mass market investments*; and
- (2) who has completed and signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the terms set out in **■ COBS 4 Annex 3R**, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

4.12B.40 **R** A self-certified sophisticated investor is an individual who has completed and signed, within the period of twelve *months* ending on the day on which the communication is made, a statement in the terms set out in **■ COBS 4 Annex 4R**, and whose completion of the statement indicates that they meet the relevant criteria to be categorised as such.

4.12B.41 **G** Where the *financial promotion* will relate to more than one type of *non-mass market investment*, the *retail client* may sign a combined statement that meets the requirements in **■ COBS 4 Annex 2R** to **■ COBS 4 Annex 4R**, as applicable, in respect of each type of *non-mass market investment* to which the *financial promotion* will relate.

4.12B.42 **R** A *firm* must not:

- (1) influence, or seek to influence, the information that a *retail client* provides when completing a certificate for the purposes of **■ COBS 4.12B.38R** to **■ COBS 4.12B.40R**; or
- (2) encourage a *retail client* to complete a further certificate in the event that a *client's* signed certificate indicates that they do not meet the criteria to be categorised as a certified high net worth investor, certified sophisticated investor or self-certified sophisticated investor, as applicable.

Sophisticated and high net worth investors: guidance on certification by authorised person and reliance on self-certification

4.12B.43 G

- (1) A *firm* which wishes to rely on any of the *certified high net worth investor* exemptions (see Part I of the Schedule to the *Promotion of Collective Investment Schemes Order*, Part I of Schedule 5 to the *Financial Promotion Order* and ■ COBS 4.12B.38R) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should take reasonable steps to ascertain that the *retail client* does, in fact, meet the income and net assets criteria set out in the relevant statement for *certified high net worth investors*.
- (2) In addition, the *firm* should consider whether the promotion of the *non-mass market investment* is in the interests of the *retail client* and whether it is fair to make the promotion to that *client* on the basis that the *client* is a *certified high net worth investor*, having regard to the generally complex nature of *non-mass market investments*. A *retail client* who meets the criteria for a *certified high net worth investor* but not for a *certified sophisticated investor* may be unable to properly understand and evaluate the risks of the *non-mass market investment* in question.

4.12B.44 G

- (1) A *firm* which is asked to or proposes to assess and certify a *retail client* as a *certified sophisticated investor* (see article 23 of the *Promotion of Collective Investment Schemes Order*, article 50 of the *Financial Promotion Order* and ■ COBS 4.12B.39R) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should carry out that assessment with due skill, care and diligence, having regard to the generally complex nature of *non-mass market investments* and the level of experience, knowledge and expertise that the *retail client* being assessed must possess in order to be fairly and reasonably assessed and certified as a sophisticated investor.
- (2)
 - (a) For example, a *retail client* whose *investment* experience is limited to mainstream *investments* such as regularly traded *securities* issued by *listed companies*, *life policies* or *units* in *regulated collective investment schemes* (other than *qualified investor schemes*) is generally unlikely to possess the requisite knowledge to adequately understand the risks associated with investing in *non-mass market investments*.
 - (b) In exceptional circumstances, however, the *retail client* may have acquired the requisite knowledge through means other than their own investment experience, for example, if the *retail client* is a professional of several years' experience with the design, operation or marketing of complex investments such as *options*, *futures*, *contracts for differences* or *non-mass market investments*.

4.12B.45 G

- (1) A *firm* which wishes to rely on any of the *self-certified sophisticated investor* exemptions (see Part II of the Schedule to the *Promotion of Collective Investment Schemes Order*, Part II of Schedule 5 to the *Financial Promotion Order* and ■ COBS 4.12B.40R) should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should consider whether the promotion of the

non-mass market investment is in the interests of the *client* and whether it is fair to make the promotion to that *client* on the basis of self-certification.

- (2) For example, it is unlikely to be appropriate for a *firm* to make a promotion under any of the *self-certified sophisticated investor* exemptions without first taking reasonable steps to satisfy itself that the investor does in fact have the requisite experience, knowledge or expertise to understand the risks of the *non-mass market investment* in question. A *retail client* who meets the criteria for a *self-certified sophisticated investor* but not for a *certified sophisticated investor* may be unable to properly understand and evaluate the risks of a *non-mass market investment*.

One-off promotions

4.12B.46 G

- (1) A *firm* which wishes to rely on one of the *one-off promotion* exemptions provided by the *Promotion of Collective Investment Schemes Order* or the *Financial Promotion Order* to promote a *non-mass market investment* to a *retail client* should have regard to its duties under the *Principles* and the *client's best interests rule*. In particular, the *firm* should consider whether the *financial promotion* of the *non-mass market investment* is in the interests of the *client* and whether it is fair to make the *financial promotion* to that *client* on the basis of a *one-off promotion* exemption.
- (2) The *one-off promotion* exemptions permit the promotion of investments to *clients* under certain conditions (see ■ PERG 8.14.3G to ■ PERG 8.14.13G for *guidance* on the scope of the one-off exemptions in the *Financial Promotion Order*). *Firms* should note that, in the *FCA's* view, promotion of a *non-mass market investment* to a *retail client* who is not a *certified high net worth investor*, a *certified sophisticated investor* or a *self-certified sophisticated investor* is unlikely to be appropriate or in that *client's* best interests.

Qualified investor schemes

4.12B.47 G

- (1) A *firm* which wishes to promote *units* in a *qualified investor scheme* to a *retail client* in circumstances where the *firm* considers the *financial promotion* to be an *excluded communication* (see ■ COBS 4.12B.4R(1)) should have regard to its duties under the *Principles* and the *client's best interests rule*.
- (2) As explained in ■ COLL 8.1, *qualified investor schemes* are intended only for *professional clients* and *retail clients* who are sophisticated investors. *Firms* should note that, in the *FCA's* view, promotion of *units* in a *qualified investor scheme* to a *retail client* who is not a *certified sophisticated investor* or a *self-certified sophisticated investor* is unlikely to be appropriate or in that *client's* best interests.

4.12B.48 G

[deleted.]

Electronic documents

4.12B.49 **G**

In this section:

- (1) any requirement that a document is signed may be satisfied by an electronic signature or electronic evidence of assent; and
- (2) any references to writing should be construed in accordance with **■ GEN 2.2.14R** and its related *guidance* provisions.

Definition of speculative illiquid security

4.12B.50 **R**

Subject to **■ COBS 4.12B.52R** to **■ COBS 4.12B.54R**, a *speculative illiquid security* is a *debenture* or *preference share* which:

- (1) has a denomination or minimum investment of less than £100,000 (or an equivalent amount as defined in **■ COBS 4.12B.51R**); and
- (2) has been issued, or is to be issued, in circumstances where the *issuer* or a member of the *issuer's group* uses, will use or purports to use some or all of the proceeds of the issue directly or indirectly for one or more of the following:
 - (a) the provision of loans or finance to any *person* other than a member of the *issuer's group*;
 - (b) *buying* or *acquiring specified investments* (whether they are to be held directly or indirectly);
 - (c) *buying* or *acquiring investments* other than *specified investments* (whether they are to be held directly or indirectly);
 - (d) *buying* real property or an interest in real property (whether it is to be held directly or indirectly);
 - (e) paying for or funding the construction of real property.

4.12B.51 **R**

For the purposes of **■ COBS 4.12B.50R(1)**:

- (1) an equivalent amount in relation to an amount denominated in any currency other than sterling is an amount of equal value denominated wholly or partly in another currency; and
- (2) the equivalent amount is to be calculated at the latest practicable date before (but in any event not more than three *business days* before) the date of the issue of *debentures* or *preference shares*.

4.12B.52 **R**

A *debenture* or *preference share* that does not otherwise fall within **■ COBS 4.12B.50R** is not a *speculative illiquid security* by virtue only of the fact that the proceeds of the issue are used to *buy* or *acquire specified investments* as part of the ordinary cash management activities or treasury functions of an *issuer* (or its *group*) carrying on a general commercial or industrial purpose as defined in **■ COBS 4.12B.54R(1)**.

4.12B.53 **R**

For the purposes of **■ COBS 4.12B.50R**, and notwithstanding the exemption for *readily realisable securities* in **■ COBS 4.12B.54R(3)(d)**, a *debenture* is also a *speculative illiquid security* if:

- (1) it meets the conditions set out in ■ COBS 4.12B.50R; and
- (2) it:
 - (a) is admitted to official listing on an exchange in the *United Kingdom* or an *EEA State*; and
 - (b) is not regularly traded on or under the rules of such an exchange; or
- (3) it:
 - (a) is a newly issued *debenture* which can be reasonably expected to be admitted to official listing on an exchange in the *United Kingdom* or an *EEA State*; and
 - (b) cannot reasonably be expected to be regularly traded on or under the rules of such an exchange when it begins to be traded.

4.12B.54 **R** A *debenture* or *preference share* is not a *speculative illiquid security* where one or more of the exemptions in (1), (3) or (4) below applies.

- (1) This exemption applies where:
 - (a) the *issuer* or a member of the *issuer's group* uses the proceeds of the issue for the purpose of the activities in ■ COBS 4.12B.50R(2)(c) (*buying* or *acquiring investments* other than *specified investments*), (d) (*buying* real property or an interest in real property) or (e) (*paying for* or *funding* the construction of real property); and
 - (b) the relevant property or *investment* is or will be used by the *issuer* or a member of the *issuer's group* for a general commercial or industrial purpose which it carries on.
- (2) The exemption in (1) will not apply in respect of a *debenture* or *preference share* within ■ COBS 4.12B.50R(2)(d) or ■ (e) if the ability of the *issuer* to pay in relation to the *debenture* or *preference share*:
 - (a) any *coupon* or other income; and/or
 - (b) capital at maturity,
 - is wholly or predominantly linked to, contingent on, highly sensitive to, or dependent, on a return generated as a result of the matters referred to in ■ COBS 4.12B.50R(2)(d) or ■ (e).
- (3) This exemption applies where the *debenture* or *preference share* is:
 - (a) issued, or to be issued, by a *credit institution*;
 - (b) issued, or to be issued, by an *investment trust*;
 - (c) a *non-mainstream pooled investment*;
 - (d) a *readily realisable security* except for a *debenture* within ■ COBS 4.12B.53R; or
 - (e) a *P2P agreement*.
- (4) This exemption applies where:
 - (a) the *issuer* is:
 - (i) a *property holding vehicle*; or

- (ii) a *single-company holding vehicle*;
- (b) any *financial promotions* made relating to the investment comply with ■ COBS 4.12A as appropriate; and
- (c) any *financial promotion* made relating to a *single-company holding vehicle* clearly and prominently states which *single company* the investment relates to.

4.12B.55 R

- (1) For the purposes of ■ COBS 4.12B.54R(1)(b), a general commercial or industrial purpose includes the following:
 - (a) a commercial activity, involving the purchase, sale and/or exchange of goods or commodities and/or the supply of services; or
 - (b) an industrial activity involving the production of goods; or
 - (c) a combination of (a) and (b).
- (2) For the purposes of ■ COBS 4.12B.54R(1)(b), a general commercial or industrial purpose does not include:
 - (a) investment to generate a pooled return;
 - (b) property development or construction services; and
 - (c) hiring, leasing or rental services.

Guidance on general commercial or industrial purpose

4.12B.56 G

- (1) ■ COBS 4.12B.50R provides that a *debenture* or *preference share* will fall within the definition of a *speculative illiquid security* where the proceeds of the issue are to be used by the *issuer* or a member of the *issuer's group* to fund various activities including *buying* or acquiring *investments* (other than *specified investments*) or the *buying* or construction of real property.
- (2) However, ■ COBS 4.12B.54R(1) provides an exemption in cases where the *investments* (other than *specified investments*) that are bought or acquired, or the property which is bought or constructed are or will be used by the *issuer* or a member of the *issuer's group* for a general commercial or industrial purpose which it carries on.
- (3) General commercial or industrial purpose is defined in ■ COBS 4.12B.55R.
- (4) The effect of the exemption in ■ COBS 4.12B.54R(1) is that a *debenture* or *preference share* will not be a *speculative illiquid security* where the proceeds of the issue are used by the *issuer* or a member of the *issuer's group* to buy or acquire *investments* (other than *specified investments*), or to buy or construct real property, and the relevant *investments* or property are or will be used by the *issuer* or *group* member for the purposes of its own commercial or industrial activities. This is illustrated in the examples in (5) and (6) below.
- (5) In relation to ■ COBS 4.12B.50R(2)(c) (*buying* or acquiring *investments* other than *specified investments*):
 - (a) where a *company* issues a *debenture* or *preference share* and uses the proceeds to purchase IT equipment for use in its

business, to the extent that the IT equipment might be considered an *investment*, the *debenture* or *preference share* will benefit from the exemption because the IT equipment is used by the *company* for its own commercial activities (in this case, for use by its staff to provide services to customers);

- (b) where a supermarket chain issues a *debenture* or *preference share* and uses the proceeds to purchase stock (for example wine) for sale as part of its retail business, to the extent that the wine might be considered an *investment*, the *debenture* or *preference share* will benefit from the exemption because the wine is used by the supermarket for its own commercial activities (in this case, to sell it on to its retail customers for a profit);
 - (c) where a *company* issues a *debenture* or *preference share* and uses the proceeds to buy or acquire art or fine wine as an investment, it will not benefit from the exemption because the art or fine wine will not be used by the *company* itself for its own commercial activities; if the art or fine wine is used to generate a pooled return, then the exemption would also not apply as a result of ■ COBS 4.12B.55R(2)(a); and
 - (d) where a *company* issues a *debenture* or *preference share* and uses the proceeds to purchase IT equipment for the purpose of hiring or leasing those out to another *company*, it will not benefit from the exemption because it is not using the IT equipment for its own commercial activities and hiring and leasing services are excluded from the definition of general commercial or industrial purpose as a result of ■ COBS 4.12B.55R(2)(c).
- (6) In relation to ■ COBS 4.12B.50R(2)(d) or ■ (e) (*buying* or constructing real property):
- (a) where a retailer issues a *debenture* or *preference share* and uses the proceeds to build a shop, the *debenture* or *preference share* will benefit from the exemption because the property is used by the retailer for its own commercial activities (in this case, the sale of goods);
 - (b) where a property developer issues a *debenture* or *preference share* and uses the proceeds to fund the costs of a property development or construction of property, which is intended to be sold or rented out for commercial purposes or as residential dwellings, it will not benefit from the exemption because the development will not be used by the developer itself, and property development and construction services are excluded from the definition of general commercial or industrial purpose (see ■ COBS 4.12B.55R(2)(b));
 - (c) where a *company* issues a *debenture* or *preference share* to fund the costs of constructing a power station which the *company* intends to operate itself with a view to selling the electricity it produces, the *debenture* or *preference share* will benefit from the exemption (unless ■ COBS 4.12B.54R(2) applies). That is because it will use the property for its own commercial or industrial activities (generating electricity). However, *firms* should also consider ■ COBS 4.12B.54R(2) and the *guidance* in (7) below.
- (7) ■ COBS 4.12B.54R(2) provides that the general commercial or industrial purposes exemption does not apply where the ability of the issuer to

pay the *coupon* or other income or to repay capital on maturity in relation to the *debenture* or *preference share* is wholly or predominantly linked to, contingent on, highly sensitive to, or dependent on, a return generated as a result of the matters referred to in ■ COBS 4.12B.50R(2)(d) or ■ (e) (buying or construction of real property).

- (8) The effect of the above is that where a *company* issues a *debenture* or *preference share* for the purpose of buying real property, an interest in real property or funding the construction of a particular project and the *company's* ability to pay interest on the *debenture* or *preference share* or repay capital depends on the success of that purchase or project, the exemption in ■ COBS 4.12B.54R(1) will not apply. In those circumstances, the *debenture* or *preference share* will be a *speculative illiquid security* unless one of the other exemptions in ■ COBS 4.12B.54R applies.