Chapter 4

Communicating with clients, including financial promotions

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4.5 Communicating with retail clients (non-MiFID provisions)

Application

4.5.1 R (1) Subject to (2) and (3), this section applies to a *firm* in relation to:

(a) the provision of information in relation to its *designated investment business*; and

(b) the *communication* or *approval* of a *financial promotion*;

where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

(2) This section does not apply to a *firm* communicating in relation to its *MiFID, equivalent third country or optional exemption business*.

(3) This section does not apply in relation to a communication:

(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*.

General rule

4.5.2 R A *firm* must ensure that information:

(1) includes the name of the *firm* (and also, where relevant, the name of the *firm* that has confirmed the compliance of the *financial promotion* for the purposes of COBS 4.10.9AR(3)(a));

(1A) where relevant, includes the date on which the *financial promotion* was *approved*;

(2) is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of *relevant business* or a *relevant investment*;

(3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;

(4) does not disguise, diminish or obscure important items, statements or warnings.

(5) uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout that ensures that such indication is prominent;

(6) is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each *client*, unless the *client* has agreed to receive information in more than one language; and

(7) is up-to-date and relevant to the means of communication used.

4.5.2A R

(1) This *rule* applies:

(a) to a *financial promotion communicated* by way of a website, mobile application or other digital medium; and

(b) where the format is such that, where relevant:

(i) the name of the *firm* that *approved* or confirmed the compliance of the *financial promotion*; or

(ii) the date on which the *financial promotion* was *approved*,

cannot reasonably be included in the *financial promotion*.

(2) The information in (1)(b) may be provided on a webpage to which a link is clearly provided in the *financial promotion*.

(3) The link in (2) must be in the format: 'Approver FRN [*firm* reference number of the *firm* that *approved* or confirmed the compliance of the *financial promotion*]'.

4.5.3 G

(1) The effect of COBS 4.5.2R(1) is that, where relevant and subject to COBS 4.5.2AR, the name of the *firm* that *approved* or confirmed the compliance of a *financial promotion* must be included in that *financial promotion*.

(2) The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *retail client* can identify the *firm* communicating the information and, if different, the *firm* that *approved* or confirmed the compliance of the *financial promotion*.

(3) The name of the *firm* (and any link provided pursuant to COBS 4.5.2AR) should be given sufficient prominence to enable the *retail client* to easily identify the *firm* responsible for the compliance of the *financial promotion* with applicable *rules*.

4.5.4 G

In deciding whether, and how, to communicate information to a particular target audience, a *firm* should take into account the nature of the product or business, the risks involved, the *client's* commitment, the likely information needs of the average recipient, and the role of the information in the sales process.

4.5.5 G

When communicating information, a *firm* should consider whether omission of any relevant fact will result in the information being insufficient, unclear,

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unfair or misleading. When considering whether a fact should be included in the communication or omitted from it, a *firm* should bear in the mind the *guidance* in COBS 4.2.2G to provide information which is appropriate and proportionate.

Comparative information

4.5.6 R If information compares *relevant business*, *relevant investments*, or persons who carry on *relevant business*, a *firm* must ensure that the comparison is meaningful and presented in a fair and balanced way

Referring to tax

4.5.7 R

(1) If any information refers to a particular tax treatment, a *firm* must ensure that it prominently states that the tax treatment depends on the individual circumstances of each *client* and may be subject to change in future.

(2) This *rule* applies in relation to a *financial promotion* except to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

Consistent financial promotions

4.5.8 R

(1) A *firm* must ensure that information contained in a *financial promotion* is consistent with any information the *firm* provides to a *retail client* in the course of carrying on *designated investment business*.

(2) This *rule* does not apply to a *financial promotion* to the extent that it relates a *pure protection contract* that is a *long-term care insurance contract*.

Innovative finance ISA

4.5.9 G Examples of information about relevant risks (COBS 4.5.2R) that a *firm* should give a *retail client* in relation to an *innovative finance ISA* include:

(1) an explanation of the tax consequences if:

   (a) the *innovative finance component* is a *P2P agreement* that is not repaid; and

   (b) an *operator of an electronic system in relation to lending* which facilitates a *P2P agreement* fails;

(2) the procedure for, timing and tax consequences of:

   (a) withdrawing a *P2P agreement* from the *innovative finance ISA*; and

   (b) a request for transfer of all or part of the *innovative finance components* in the *innovative finance ISA*;

(3) a warning, as relevant, that it may, or will, not be possible to sell or trade *P2P agreements* at market value on a secondary market; and

(4) an express warning that holding an *investment* within an *innovative finance ISA* does not reduce the risks associated with that *investment* or guarantee returns and that it is possible to lose all of the money invested. This warning should be additional to any more general warning that a product or service places a *client's* capital at risk (■ COBS 4.2.4G(1)).

4.5.10 G *Operators of electronic systems in relation to lending* and *firms* which *advise on P2P agreements* should also have regard to the *guidance* in ■ COBS 14.3.7AG and ■ COBS 14.3.7BG regarding the types of information they should provide to *clients* to explain the specific nature and risks of *P2P agreements*.

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Lifetime ISA

4.5.11 G Information about relevant risks (■ COBS 4.5.2R) that a *firm* should give a *retail client* in relation to a *lifetime ISA* may include:

(1) an explanation of:

a *retail client's* eligibility to subscribe to a *lifetime ISA* (including annual subscription limits) and to claim the *lifetime ISA government bonus*;

(b) the *lifetime ISA government withdrawal charge* and the circumstances in which it might arise; and

(c) the process by which a *retail client* can transfer a *lifetime ISA*; and

(2) warnings that, if the *retail client*:

(a) incurs a *lifetime ISA government withdrawal charge*, the *retail client* may get back less than they paid in to a *lifetime ISA*;

(b) saves in a *lifetime ISA* instead of enrolling in, or contributing to a *qualifying scheme*, *occupational pension scheme*, or *personal pension scheme*:

(i) the *retail client* may lose the benefit of contributions by an employer (if any) to that scheme; and

(ii) the *retail client's* current and future entitlement to means tested benefits (if any) may be affected.

Authorised fund managers' communications in relation to benchmarks

4.5.11A R The *rules* in ■ COBS 4.5.12R to ■ COBS 4.5.15R apply to:

(1) a *financial promotion* relating to an *authorised fund*;

(2) a communication which contains a statement referring to or concerning the past performance of an *authorised fund*; and

(3) any other communication about an *authorised fund* that refers in any way to the aims of the *fund* or describes the benefits or risks of investing in it.

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4.5.11B G As a result of ■ COBS 4.5.11AR, ■ COBS 4.5.12R to ■ COBS 4.5.15R would not normally be expected to apply to administrative communications if those communications do not refer in any way to the aims of an *authorised fund* or describe the benefits or risks of investing in it. Examples of such communications might include contract notes that simply set out details of the *unitholder's* purchase or *redemption* of *units*, statements of income distributions or accumulations, and confirmations of a change of *unitholder* registration details.

4.5.12 R Subject to ■ COBS 4.5.13R, an *authorised fund manager* must include in any communication about an *authorised fund* to which this *rule* applies:

(1) a short explanation, in terms consistent with the relevant *prospectus*, of the choice and use of every *target benchmark*, *constraining benchmark* or *comparator benchmark* used in relation to the *scheme*; or

(2) where no *target benchmark*, *constraining benchmark* or *comparator benchmark* is referred to in the *prospectus*, a statement to that effect and a short explanation of how investors can assess the performance of the *scheme*.

4.5.13 R Where an *authorised fund manager* includes, in any communication about an *authorised fund* to which this *rule* applies, an indication of past performance for any *authorised fund* it manages, it must (in addition to complying with ■ COBS 4.6.2R where applicable):

(1) include the corresponding past performance record of any *target benchmark* or *constraining benchmark* referred to in the *prospectus* of the *scheme*; and

(2) not include an indication of past performance for any index, indices or similar factor that is not referred to in the *prospectus* of the *scheme*.

4.5.14 R

(1) Subject to paragraph (2), if a communication to which ■ COBS 4.5.13R applies includes information comparing past performance of the *scheme* against one or more *comparator benchmarks*, the *authorised fund manager* must, for the period specified in paragraph (3) and in every subsequent communication it makes that is also subject to ■ COBS 4.5.13R:

  (a) include a comparison against the same *comparator benchmark* or *comparator benchmarks*; and

  (b) not include a comparison against any other benchmark.

(2) Paragraph (1) does not apply if such a comparison would not be compliant with ■ COBS 4.5.13R as a result of a change to the *prospectus* of the *scheme*.

(3) The period specified for the purposes of paragraph (1) is:

  (a) twelve *months* after a one-off communication is made; or

(b) for as long as the communication remains available to the public in a *durable medium* and has not been superseded by a revised version.

4.5.15 R COBS 4.5.12R to COBS 4.5.14R do not apply in respect of any reference to a *comparator benchmark* that is not identified in the *prospectus* of the relevant *scheme* when that reference appears in a communication that is:

(1) used exclusively in the course of a personal visit, telephone conversation or other interactive dialogue; or

(2) in response to a specific unsolicited request by a *client* for past performance to be compared with a particular *comparator benchmark*.

Funds investing in inherently illiquid assets (FIIAs)

4.5.16 R (1) This *rule* applies to any *financial promotion* relating to a *FIIA* except the *FIIA's prospectus*.

(2) A *firm* must ensure that the following risk warning is given:

> "[Name of fund] invests in assets that may at times be hard to sell. This means that there may be occasions when you experience a delay or receive less than you might otherwise expect when selling your investment. For more information on risks, see the prospectus and key investor information document."

(3) If the *financial promotion* is a *non-real time financial promotion*, a *firm* must ensure that the risk warning is prominently placed in the *financial promotion* in a font size that is at least equal to the predominant font size used throughout the communication.

4.5.17 G The *rules* in COBS 4.5 do not apply to the form or content of a *NURS-KII document* (see COBS 4.1.7AR (Modification relating to the KII Regulation)).