Chapter 4

Communicating with clients, including financial promotions
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 PR 3.3 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;

(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.

4.5.3 G 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.

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, 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 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; and

(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.

4.5.10 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.

Lifetime ISA

4.5.11 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.