

**CONDUCT OF BUSINESS SOURCEBOOK (MIFID TRANSPOSITION)
INSTRUMENT 2007**

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (1) section 138 (General rule-making power);
- (2) section 139(4) (Miscellaneous ancillary matters);
- (3) section 145 (Financial promotions rules);
- (4) section 149 (Evidential provisions);
- (5) section 156 (General supplementary powers);
- (6) section 157 (Guidance);
- (7) section 213 (The compensation scheme);
- (8) section 214 (General);
- (9) section 226 (Compulsory jurisdiction); and
- (10) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions module of the FSA’s Handbook.

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

D. The provisions of the Conduct of Business sourcebook are deleted and replaced by the provisions in the Annex to this instrument.

Citation

E. This instrument may be cited as the Conduct of Business Sourcebook (MiFID Transposition) Instrument 2007.

By order of the Board
25 January 2007

Annex

Conduct of Business sourcebook (COBS)

In this Annex, the entire text is new and is not underlined. Spaces have been left blank, to enable provisions to be added later.

- 1 Application
 - 1.1 MiFID transposition
 - 1.1.1 R This sourcebook applies to:
 - (1) the *MiFID business* of a *firm*; and
 - (2) the *equivalent business of a third country investment firm*.
 - 1.1.2 R This sourcebook applies only to the extent necessary:
 - (1) to implement *MiFID* and the *MiFID implementing directive*; and
 - (2) to ensure that the establishments in the *United Kingdom of third country investment firms* are treated no less favourably than the *UK branch* of an *EEA investment firm*.
 - 1.2 MiFID territorial scope
 - 1.2.1 R The territorial scope of this sourcebook is that prescribed by *MiFID*.
 - 1.2.2 G For a *UK MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply to its *MiFID business* carried on from an establishment in the *United Kingdom*. They also generally apply to its *MiFID business* carried on from an establishment in another *EEA State*, but only where that business is not carried on within the territory of that State. See Articles 31(1) and 32(1) and (7) of *MiFID*.
 - 1.2.3 G For an *EEA MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply only to its *MiFID business* if that business is carried on from an establishment in, and within the territory of, the *United Kingdom*. See Article 32(1) and (7) of *MiFID*.
 - 1.2.4 G However, the *rules* on the *investment research* and *non-independent research* (*COBS 13.2* and *COBS 13.3*) and the *rules* on *personal transactions* (*COBS 12.7*) apply on a “home state” basis. This means that they apply to the establishments of a *UK MiFID investment firm* in the *United Kingdom* and another *EEA State* and do not apply to an *EEA MiFID investment firm*.
- 2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

- 2.1.1 R (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client*.
- (2) This *rule* applies in relation to *designated investment business* carried on for:
- (a) a *retail client*; and
 - (b) in relation to *MiFID business* or the *equivalent business of a third country investment firm* for any other *client*.

[Note: article 19(1) of *MiFID*]

2.2 Information disclosure before providing services

2.2.1 [intentionally blank]

- 2.2.2 R (1) A *firm* must provide appropriate information in a comprehensible form to a *client* about:
- (a) the *firm* and its services;
 - (b) *designated investments* and proposed investment strategies; including appropriate guidance on and warnings of the risks associated with investments in those *designated investments* or in respect of particular investment strategies;
 - (c) *execution venues*; and
 - (d) costs and associated charges,
- so that the *client* is reasonably able to understand the nature and risks of the service and of the specific type of *designated investment* that is being offered and, consequently, to take investment decisions on an informed basis.
- (2) A *firm* may provide the information required by this *rule* in a standardised format.
- (3) This *rule* applies in relation to *MiFID business* or the *equivalent business of a third country investment firm*.
- (4) The requirement in this *rule* to provide information about *designated investments* and proposed investment strategies applies to a *firm* in relation to *designated investment business* other than *MiFID business* or the *equivalent business of a third country investment firm* carried on for, a *retail client* in relation to a *derivative* or a *warrant* or *stock lending activity*.

[Note: article 19(3) of *MiFID*]

2.2.3 [intentionally blank]

2.3 Inducements

Rule on Inducements

2.3.1 R A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* or, in the case of *MiFID business* or *the equivalent business of a third-country investment firm*, another *ancillary service*, carried on for a *client* other than:

- (1) a fee, commission or non-monetary benefit paid or provided to or by the *client* or a *person* on behalf of the *client*; or
- (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:
 - (a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the *firm's* duty to act in the best interests of the *client*; and
 - (b) in relation to *MiFID business* or *the equivalent business of a third-country investment firm*:
 - (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, prior to the provision of the service; and
 - (ii) the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or
- (3) proper fees which enable or are necessary for the provision of *designated investment business* or *ancillary services*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the *firm's* duties to act honestly, fairly and professionally in accordance with the best interests of its *clients*.

[Note: article 26 of the *MiFID implementing Directive*]

2.3.2 R A *firm* will satisfy the disclosure obligation under this section if it:

- (1) discloses the essential arrangements relating to the fee, commission or non-monetary benefit in summary form;

- (2) undertakes to the *client* that further details will be disclosed on request; and
- (3) honours the undertaking in (2).

[Note: article 26 of the *MiFID implementing Directive*]

- 2.3.3 [intentionally blank]
- 2.3.4 [intentionally blank]
- 2.3.5 [intentionally blank]
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- 2.3.12 [intentionally blank]
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- 2.3.16 [intentionally blank]

Record keeping: inducements

- 2.3.17 R (1) In relation to its *MiFID business* or the *equivalent business of a third-country investment firm*, a *firm* must make a record of each fee, commission or non-monetary benefit given to another *firm* that meets the criteria set out in *COBS 2.3.1 R(2)* and must keep that record for at least five years from the date on which it was given.
- (2) A *firm* must make a record of each benefit given to another *firm* in accordance with *COBS 2.3.14 G*, and must keep that record for at least five years from the date on which it was given or received.

[Note: see article 51(3) of the *MiFID implementing Directive*]

2.4 Agent as client and reliance on others

2.4.1 R This section applies to a *firm* that is conducting *designated investment business* or *ancillary activities* or, in the case of *MiFID business* or the *equivalent business of a third country investment firm*, other *ancillary services*.

2.4.2 [intentionally blank]

Agent as client

2.4.3 R (1) If a *firm* (F) is aware that a *person* (C1) with or for whom it is providing services is acting as agent for another person (C2) in relation to those services, C1, and not C2, is the *client* of F in respect of that business.

(2) Paragraph (1) does not apply if:

- (a) F has agreed with C1 in writing to treat C2 as its *client*; or
- (b) C1 is neither a *firm* nor an *overseas financial institution* and the main purpose of the arrangements between the parties is the avoidance of duties that F would otherwise owe to C2.

If this is the case, C2 is the *client* of F in respect of that business and C1 is not.

(3) If there is an agreement under paragraph (2)(a) in relation to more than one C2 represented by C1, F may discharge any requirement to notify, obtain consent from, or enter into an agreement with each C2 by sending to, or receiving from, C1 a single communication expressed to cover each C2, except that the following will be required for each C2:

- (a) separate risk warnings required under this sourcebook;
- (b) separate confirmations under the requirements on occasional reporting (*COBS 17.3*); and
- (c) separate *periodic statements*.

Reliance on other investment firms: MiFID and equivalent business

2.4.4 R (1) This *rule* applies if a *firm* (F1), in the course of performing *MiFID business* or the *equivalent business of a third country investment firm*, receives an instruction to perform an *investment or ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:

- (a) a *MiFID investment firm* or a *third country investment firm*; or
- (b) an *investment firm* that is:

- (i) a *firm* or authorised in another *EEA State*; and
 - (ii) subject to equivalent relevant requirements.
- (2) F1 may rely upon:
 - (a) any information about C transmitted to it by F2; and
 - (b) any recommendations in respect of the service or transaction that have been provided to C by F2.
- (3) F2 will remain responsible for:
 - (a) the completeness and accuracy of any information about C transmitted by it to F1; and
 - (b) the appropriateness for C of any advice or recommendations provided to C.
- (4) F1 will remain responsible for concluding the services or transaction based on any such information or recommendations in accordance with the applicable requirements under the *regulatory system*.

[Note: article 20 of *MiFID*]

- 2.4.5 [intentionally blank]
- 2.4.6 [intentionally blank]
- 2.4.7 [intentionally blank]
- 2.4.8 [intentionally blank]
- 2.4.9 [intentionally blank]
- 2.4.10 [intentionally blank]

3 Client Categorisation

3.1 Application

Scope

3.1.1 R The scope of this chapter is the same as that of the *rules* in the *Handbook* to which it relates.

3.1.2 [intentionally blank]

3.2 Clients

General definition

- 3.2.1 R (1) A *person* to whom a *firm* provides, intends to provide or has provided:
- (a) a service in the course of carrying on a *regulated activity*; or
 - (b) in the case of *MiFID business* or the *equivalent business of a third country investment firm*, an *ancillary service*,
- is a "client" of that *firm*.
- (2) A "client" includes a potential client.
- (3) In relation to the *financial promotion rules*, a *person* to whom a *financial promotion* or marketing communication is or is likely to be *communicated* is a "client" of a *firm* that *communicates or approves* it.
- (4) A client of an *appointed representative* or, if applicable, a *tied agent* is a "client" of the *firm* for whom that *appointed representative*, or *tied agent* acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* or *MiFID* (see sections 39 and 39A of the *Act* and *SUP 12.3.5R*).

[Note: article 4(1)(10) of *MiFID*]

3.2.2 [intentionally blank]

- 3.2.3 R (1) If a *firm* provides services to a *person* that is acting as an agent, the identity of its client will be determined in accordance with the *rule* on agents as clients (see *COBS 2.4.3R*).
- (2) [intentionally blank]
- (3) If a *firm* provides services to a *person* that is acting as the trustee of a trust, that *person* will be the *firm's* client and the underlying beneficiaries of the trust will not.
- (4) [intentionally blank]
- (5) [intentionally blank]

3.3 General notifications: MiFID and equivalent business

- 3.3.1 R In relation to *MiFID business* or the *equivalent business of a third country investment firm*, a *firm* must:
- (1) notify a new *client* of its categorisation as a *retail client, professional*

client, or *eligible counterparty* in accordance with this chapter; and

- (2) prior to the provision of services, inform a *client* in a *durable medium* about:
- (a) any right that *client* has to request a different categorisation; and
 - (b) any limitations to the level of *client* protection that such a different categorisation would entail.

[Note: paragraph 2 of section I of annex II to *MiFID* and articles 28(1) and (2) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.4 Retail clients

- 3.4.1 R A *retail client* is a *client* who is not a *professional client* or an *eligible counterparty*.

[Note: article 4(1)(12) of *MiFID*]

3.4.2 [intentionally blank]

3.5 Professional clients

- 3.5.1 R A *professional client* is a *client* that is either a *per se professional client* or an *elective professional client*.

[Note: article 4(1)(11) of *MiFID*]

Per se professional clients

- 3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

- (1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised by an *EEA State* or a third country and whether or not authorised by reference to a directive:
- (a) a *credit institution*;
 - (b) an *investment firm*;
 - (c) any other authorised or regulated financial institution;
 - (d) an insurance company;

- (e) a collective investment scheme or the management company of such a scheme;
 - (f) a pension fund or the management company of a pension fund;
 - (g) a commodity or commodity derivatives dealer;
 - (h) a local;
 - (i) any other institutional investor.
- (2) a large undertaking meeting two of the following size requirements on a company basis:
- (a) balance sheet total of €20,000,000;
 - (b) net turnover of €40,000,000;
 - (c) own funds of €2,000,000.
- (3) a national or regional government, a public body that manages public debt, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECP, the EIB) or another similar international organisation.
- (4) another institutional investor whose main activity is to invest in *financial instruments* (in relation to the *firm's MiFID business* or the *equivalent business of a third country investment firm*) or *designated investments* (in relation to the *firm's* other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

[Note: first paragraph of section I of annex II to *MiFID*]

Elective professional clients

3.5.3 R A *firm* may treat a *client* as an *elective professional client* if it complies with paragraphs (1) and (3) and, where applicable, paragraph (2):

- (1) the *firm* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved (the “qualitative test”);
- (2) in relation to *MiFID business* or the *equivalent business of a third country investment firm*, in the course of that assessment, at least two of the following criteria are satisfied:

- (a) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - (b) the size of the *client's financial instrument* portfolio, defined as including cash deposits and *financial instruments*, exceeds €500,000;
 - (c) the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged,
- (the “quantitative test”); and
- (3) the following procedure is followed:
- (a) the *client* must state in writing to the *firm* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;
 - (b) the *firm* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and
 - (c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

[Note: first, second, third and fifth paragraphs of section II.1 and first paragraph of section II.2 of annex II to *MiFID*]

3.5.4 R If the *client* is an entity, the qualitative test should be performed in relation to the *person* authorised to carry out transactions on its behalf.

[Note: fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.5 G The fitness test applied to managers and directors of entities licensed under directives in the financial field is an example of the assessment of expertise and knowledge involved in the qualitative test.

[Note: fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.6 R Before deciding to accept a request for re-categorisation as an *elective professional client*, a *firm* must take all reasonable steps to ensure that the *client* requesting to be treated as an *elective professional client* satisfies the qualitative test and, where applicable, the quantitative test.

[Note: second paragraph of section II.2 of annex II to *MiFID*]

3.5.7 G An *elective professional client* should not be presumed to possess market

knowledge and experience comparable to a *per se professional client*.

[Note: second paragraph of section II.1 of annex II to *MiFID*]

- 3.5.8 G *Professional clients* are responsible for keeping the *firm* informed about any change that could affect their current categorisation.

[Note: fourth paragraph of section II.2 of annex II to *MiFID*]

- 3.5.9 R If a *firm* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as an *elective professional client*, the *investment firm* must take the appropriate action.

[Note: fourth paragraph of section II.2 of annex II to *MiFID*]

3.6 Eligible counterparties

- 3.6.1 R (1) An *eligible counterparty* is a *client* that is either a *per se eligible counterparty* or an *elective eligible counterparty*.
- (2) In relation to *MiFID business* or the *equivalent business of a third country investment firm*, a *client* can only be an *eligible counterparty* in relation to *eligible counterparty business*.

[Note: article 24(1) of MiFID]

Per se eligible counterparties

- 3.6.2 R Each of the following is a *per se eligible counterparty* (including an entity that is not from an *EEA State* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:
- (1) an *investment firm*;
 - (2) a *credit institution*;
 - (3) an insurance company;
 - (4) a *collective investment scheme* authorised under the *UCITS Directive* or its management company;
 - (5) a pension fund or its management company;
 - (6) another financial institution authorised or regulated under European Community legislation or the national law of an *EEA State*;
 - (7) an undertaking exempted from the application of *MiFID* under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive;
 - (8) a national government or its corresponding office, including a public body that deals with the public debt;

- (9) a central bank;
- (10) a supranational organisation.

[Note: first paragraph of article 24(2) and first paragraph of article 24(4) of *MiFID*]

Elective eligible counterparties

3.6.3 R A *firm* may treat a *client* as an *elective eligible counterparty* if:

- (1) the *client* is an undertaking and:
 - (a) is a *per se professional client* (except for a *client* that is only a *per se professional client* because it is an institutional investor under *COBS 3.5.2 R(4)*); or
 - (b) requests such categorisation and is an *elective professional client*, but only in respect of the services or transactions for which it could be treated as a *professional client*; and
- (2) the *firm* has, in relation to *MiFID business* or the *equivalent business of a third country investment firm*, obtained express confirmation from the prospective counterparty that it agrees to be treated as an *eligible counterparty*.

[Note: article 24(3) and the second paragraph of article 24(4) of *MiFID* and article 50(1) of the *MiFID implementing Directive*]

3.6.4 G The categories of *elective eligible counterparties* include an equivalent undertaking that is not from an *EEA State* provided the above conditions and requirements are satisfied.

3.6.5 R A *firm* may obtain a prospective counterparty's confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.

[Note: second paragraph of article 24(3) of *MiFID*]

Client and firm located in different jurisdictions

3.6.6 R In the case of *MiFID business* or the *equivalent business of a third country investment firm*, in the event of a transaction where the prospective counterparties are located in different *EEA States*, the *firm* shall defer to the status of the other undertaking as determined by the law or measures of the *EEA State* in which that undertaking is established.

[Note: first paragraph of article 24(3) of *MiFID*]

3.7 Providing clients with a higher level of protection

3.7.1 R A *firm* must allow a *professional client* or an *eligible counterparty* to request re-categorisation as a *client* that benefits from a higher degree of protection.

[Note: second paragraph of article 24(2) of, and the second paragraph of section I of annex II to, *MiFID* and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.2 G It is the responsibility of a *professional client* or *eligible counterparty* to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

[Note: third paragraph of section I and fourth paragraph of section II.2 of annex II to *MiFID* and second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.3 R A *firm* may, either on its own initiative or at the request of the *client* concerned:

(1) treat as a *professional client* or a *retail client* a *client* that might otherwise be categorised as a *per se eligible counterparty*;

(2) treat as a *retail client* a *client* that might otherwise be categorised as a *per se professional client*,

and if it does so, the *client* will be re-categorised accordingly. Where applicable, this re-categorisation is subject to the requirement for a written agreement in *COBS 3.7.5R*.

[Note: second paragraph of article 24(2) of, and second paragraph of section I of annex II to, *MiFID* and article 28(3) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.4 R If a *per se eligible counterparty* requests treatment as a *client* whose business with the *firm* is subject to conduct of business protections, but does not expressly request treatment as a *retail client* and the *firm* agrees to that request, the *firm* must treat that *eligible counterparty* as a *professional client*.

[Note: first paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.5 R (1) If, in relation to *MiFID business* or the *equivalent business of a third country investment firm* a *per se professional client* or a *per se eligible counterparty* requests treatment as a *retail client*, the *client* will be classified as a *retail client* if it enters into a written agreement with the *firm* to the effect that it will not be treated as a *professional client* or *eligible counterparty* for the purposes of the applicable conduct of business regime.

(2) This agreement must specify the scope of the re-categorisation, such as whether it applies to one or more particular services or transactions, to one or more types of product or transaction or to one

or more *rules*.

[Note: fourth paragraph of section I of annex II to *MiFID* and second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.6 [intentionally blank]

3.7.7 G The ways in which a *client* may be provided with additional protections under this section include re-categorisation on:

- (1) a general basis;
- (2) a trade by trade basis;
- (3) in respect of one or more specified *rules*;
- (4) in respect of one or more particular services or transactions; or
- (5) in respect of one or more types of product or transaction.

[Note: second paragraph of article 24(2) of *MiFID*]

3.7.8 [intentionally blank]

3.8 Policies, procedures and records

Policies and procedures

3.8.1 R A *firm* must implement appropriate written internal policies and procedures to categorise its *clients*.

[Note: fourth paragraph of section II.2 of annex II to *MiFID*]

Records

3.8.2 R (1) A *firm* must make a record of the form of each notice provided and each agreement entered into under this chapter. This record must be made at the time that standard form is first used and retained for the relevant period after the *firm* ceases to carry on business with *clients* who were provided with that form.

[Note: see article 51(3) of *MiFID implementing Directive*]

- (2) A *firm* must make a record in relation to each *client* of:
 - (a) the categorisation established for the *client* under this chapter, including sufficient information to support that categorisation;
 - (b) evidence of despatch to the *client* of any notice required under this chapter and if such notice differs from the relevant

standard form, a copy of the actual notice provided; and

[Note: see article 51(3) of *MiFID implementing Directive*]

- (c) a copy of any agreement entered into with the *client* under this chapter.

This record must be made at the time of categorisation and should be retained for relevant period after the *firm* ceases to carry on business with or for that *client*.

- (3) The relevant periods are:
 - (a) [intentionally blank]
 - (b) [intentionally blank]
 - (c) five years in relation to *MiFID business* or the *equivalent business of a third country investment firm*; and

4 Communication to clients

4.1 Application

4.1.1 R This chapter generally applies in relation to:

- (1) communicating information to a *client* in the course of, or in connection with, *designated investment business*;
- (2) *communicating or approving a financial promotion*.

4.1.2 [intentionally blank]

4.1.3 [intentionally blank]

4.1.4 R *COBS 4* does not apply to the provision by a *firm* to a *client* of a copy of a prospectus that has been drawn up and published in accordance with the *Prospectus Directive* if the *firm* is not responsible under that directive for the information given in the prospectus.

[Note: recital 52 to the *MiFID implementing Directive*]

4.1.5 [intentionally blank]

Fair, clear and not misleading communications

4.2.1 R A *firm* must ensure that all information addressed by it to a *client* in relation to a *relevant business*, is fair, clear and not misleading. (The "*fair, clear and not misleading rule*").

[Note: article 19(2) of *MiFID*]

4.2.2 [intentionally blank]

4.2.3 [intentionally blank]

4.2.4 [intentionally blank]

4.2.5 [intentionally blank]

4.2.6 [intentionally blank]

4.3 Communications to retail clients

4.3.1 R This section applies in relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

General rule

4.3.2 R A *firm* must ensure that information:

- (1) includes the name of the *firm*;
- (2) is accurate and in particular does not emphasise any potential benefits of *relevant business* or a *relevant investment* without also giving a fair and prominent indication of any relevant risks;
- (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; and
- (4) does not disguise, diminish or obscure important items, statements or warnings.

[Note: article 27(2) of the *MiFID implementing Directive*]

4.3.3 [intentionally blank]

4.3.4 [intentionally blank]

4.3.5 [intentionally blank]

Comparative information

4.3.6 R A *firm* must ensure that, if information compares *relevant business*, *relevant investments*, or *persons* who carry on *relevant business*;

- (1) the comparison is meaningful and presented in a fair and balanced way; and
- (2) (in relation to a *financial promotion*, *MiFID business* or the *equivalent business of a third country investment firm*);
 - (a) the sources of the information used for the comparison are

specified; and

(b) the key facts and assumptions used to make the comparison are included.

(3) In this rule, *relevant business* includes *ancillary services* in relation to *MiFID business* or the *equivalent business of a third country investment firm*.

[Note: article 27(3) of the *MiFID implementing Directive*]

Referring to tax

4.3.7 R A *firm* must ensure that:

(1) any information in relation to *MiFID business* or the *equivalent business of a third country investment firm*; or

(2) otherwise, any *financial promotion*;

that refers to a particular tax treatment prominently states that the tax treatment depends on the individual circumstances of each *client* and may be subject to change in future.

[Note article 27(7) of the *MiFID implementing Directive*]

4.3.8 [intentionally blank]

5 Financial promotion

5.1 Application

5.1.1 R *COBS 5 Annex 1R* governs the application of this chapter and of the *financial promotion rules* in *COBS 4* and also deals with certain aspects of the interpretation of these provisions. *COBS 5 Annex 1* does not affect the application of the *rules* in *COBS 4* to the extent that they are not *financial promotion rules*.

5.1.2 [intentionally blank]

5.1.3 [intentionally blank]

5.1.4 [intentionally blank]

5.2 [intentionally blank]

5.2.1 [intentionally blank]

5.2.2 [intentionally blank]

5.2.3 [intentionally blank]

5.2.4 R A *firm* must ensure that a *financial promotion* is:

- (1) clearly identifiable as such; and
- (2) consistent with any information the *firm* provides to a *retail client* in the course of carrying on *designated investment business* or *ancillary services*.

[Note: article 19(2) of *MiFID*, article 29(7) of the *MiFID implementing Directive*]

5.2.5 [intentionally blank]

5.3 Past, simulated past and future performance

5.3.1 R This section applies:

- (1) in relation to all *financial promotions*, except the *rule* on future performance (*COBS 5.3.7R*) which only applies in relation to *financial promotions* that relate to a *financial instrument*;
- (2) in the case of business that is *MiFID business* or the *equivalent business of a third country investment firm*, in relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

Past performance

5.3.2 R A *firm* must ensure that information that contains an indication of past performance of *relevant business* or of a *relevant investment*, satisfies the following conditions:

- (1) that indication is not the most prominent feature of the communication;
- (2) the information includes appropriate performance information which covers at least the immediately preceding 5 years, or the whole period for which the investment has been offered, the financial index has been established, or the service has been provided if less than 5 years, or such longer period as the *firm* may decide, and in every case that performance information must be based on and show complete twelve month periods;
- (3) the reference period and the source of information are clearly stated;
- (4) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

- (5) if the indication relies on figures denominated in a currency other than that of the *EEA State* in which the *retail client* is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- (6) if the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed.

[Note: article 27(4) of the *MiFID implementing Directive*]

5.3.3 [intentionally blank]

5.3.4 [intentionally blank]

5.3.5 [intentionally blank]

Simulated past performance

- 5.3.6 R A *firm* must ensure that if information includes or refers to simulated past performance of *relevant business* or a *relevant investment*:
- (1) it relates to an investment or a financial index;
 - (2) the simulated past performance is based on the actual past performance of one or more investments or financial indices which are the same as, or underlie, the investment concerned;
 - (3) in respect of the actual past performance, the conditions set out in the *rule* on past performance (*COBS 5.3.2R*) are complied with; and
 - (4) the information contains a prominent warning that the figures refer to simulated past performance.

[Note: article 27(5) of the *MiFID implementing Directive*]

Future performance

- 5.3.7 R A *firm* must ensure that where the communication contains any information on the future performance of a *financial instrument* it:
- (1) is not based on and does not refer to simulated past performance;
 - (2) is based on reasonable assumptions supported by objective data;
 - (3) discloses the effect of commissions, fees or other charges if the indication is based on gross performance;
 - (4) contains a prominent warning that such forecasts are not a reliable indicator of future performance.

[Note: article 27(6) of the *MiFID implementing Directive*]

5.3.8 [intentionally blank]

5.4 Financial promotions containing offers or invitations

5.4.1 R (1) A *firm* must ensure that a *financial promotion* contains:

(a) such of the information referred to in the *rules* implementing Articles 30 to 33 of the *MiFID implementing Directive* (*COBS 7.1.4R, COBS 7.1.6R, COBS 7.1.7R, COBS 7.1.8R, COBS 15.3.2R, COBS 15.3.3R, COBS 15.3.4R, and COBS 15.3.5R*) as is relevant to that offer or invitation; and

(b) [intentionally blank]

(2) This *rule* applies if a *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by a *retail client* and contains:

(a) an offer to enter into a *controlled agreement* with any *person* who responds to the communication; or

(b) an invitation to any *person* who responds to the communication to make an offer to enter into an agreement of that kind;

and specifies the manner of response or includes a form by which any response may be made.

(3) However, this *rule* does not apply to a communication if, in order to respond to an offer or invitation contained in it, the *retail client* must refer to another document or documents, which, alone or in combination, contain that information.

[Note: article 29(8) of the *MiFID implementing Directive*]

5.4.2 [intentionally blank]

5.4.3 [intentionally blank]

5.5 [intentionally blank]

5.6 [intentionally blank]

5.7 [intentionally blank]

5.8 [intentionally blank]

Record keeping: financial promotion

5.8.1 R (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.
- (3) A *firm* must retain the record:
 - (a) in relation to a *financial promotion* relating to a *pension transfer, pension opt-out* or *FSAVC*, indefinitely;
 - (b) in relation to an *life policy, OPS, a SSAS, a personal pension scheme* or a *stakeholder pension scheme*, for six years;
 - (c) in relation to a *financial promotion* relating to *MiFID business* or *ancillary services* or the *equivalent business of a third country investment firm*, for five years; and
 - (d) for three years in any other case.

[Note: see article 51(3) of the *MiFID implementing Directive*]

5.8.2 [intentionally blank]

5.8.3 [intentionally blank]

Annex 1R : application

This annex forms part of *COBS 5.1.1R*.

1. Application

1.1 Who? General

1.1.1 R This chapter applies to a *firm* (including an *ICVC*) which *communicates* or *approves a financial promotion*.

1.1.2 R *COBS 5.3* also applies where appropriate and proportionate to a *firm* in relation to information that is not a *financial promotion* communicated to a *retail client* and which contains information on past, simulated past or future performance and which relates to *MiFID business* or the *equivalent business of a third country investment firm*.

[Note: recital 46 to the *MiFID implementing Directive*]

1.1.3 [intentionally blank]

1.1.4 [intentionally blank]

1.2 Application: what?

Interpreting the rules in this section

- 1.2.1 R If there is a conflict between two *rules* in this section, the *rule* that appears first takes precedence over the later *rule* except and to the extent specifically provided in the first *rule*. The fact that the first *rule* is specifically subject to a later *rule* does not mean that the later *rule* takes precedence over any *rule* that comes between it and the first *rule*.

Rules about application and interpretation

- 1.2.2 R The *rules* in COBS 4.1, COBS 5.1 and COBS 5 Annex 1 always apply to a *financial promotion*.

- 1.2.3 [intentionally blank]

Mortgages, general insurance and prohibited promotions

- 1.2.4 R The *financial promotion rules* do not apply in relation to a *financial promotion* to the extent that:
- (1) [intentionally blank]
 - (2) [intentionally blank]
 - (3) its *communication* by a *firm* would contravene section 238(1) of the *Act* (Restrictions on promotion).

Image advertising

- 1.2.5 R (1) The *fair, clear and not misleading rule* is the only *financial promotion rule* that applies to "image advertising", that is a *financial promotion* which consists only of one or more of the following:
- (a) the name of the *firm*;
 - (b) a logo or other image associated with the *firm*;
 - (c) a contact point; and
 - (d) a reference to the types of *regulated activities* provided by the *firm*, or to its fees or commissions.
- (2) But this *rule* is subject to:
- (a) the *rule* on approving *financial promotions* (see COBS 5 Annex 1.2.8R); and
 - (b) in relation to business other than *MiFID business* and the *equivalent business of a third country investment firm*, the general exemptions (see COBS 5 Annex 1, 1.2.9R).

[Note: recital 41 of the *MiFID implementing Directive*]

MiFID business and the equivalent business of a third country investment firm

- 1.2.6 R (1) The *MiFID information rules* apply in relation to a *financial promotion* for *MiFID business* or the *equivalent business of a third country investment firm*.
- (2) However, the *MiFID information rules* do not apply if such a *financial promotion* consists of a *firm* providing a *client* with a copy of a prospectus that has been drawn up and published in accordance with the *Prospectus Directive* if the *firm* is not responsible under that directive for the information given in the prospectus.

[Note: recital 52 to *MiFID*]

1.2.7 [intentionally blank]

1.2.8 [intentionally blank]

1.2.9 [intentionally blank]

1.2.10 [intentionally blank]

1.3 Application: where?

Default position

- 1.3.1 R The *financial promotion rules* generally apply to a *firm* only in relation to:
- (1) the communication of a *financial promotion* to a *person* inside the *United Kingdom*;
- (2) the communication of a *cold call* to a *person* outside the *United Kingdom*, unless:
- (a) it is made from a place outside the *United Kingdom*; and
- (b) it is made for the purposes of a business which is carried on outside the *United Kingdom* and which is not carried on in the *United Kingdom*; and
- (3) [intentionally blank]
- 1.3.2 [intentionally blank]
- 1.3.3 [intentionally blank]
- 1.3.4 [intentionally blank]
- 1.3.5 [intentionally blank]

1.4 Words and phrases used in the financial promotion rules

1.4.1 [intentionally blank]

1.4.2 R

For the purposes of this chapter, the words and phrases set out in the following table have the meaning set out in the row immediately below them:

(1)	made to, directed at and recipient	
	The words "made to", "directed at" and "recipient" are to be interpreted as though article 6 of the <i>Financial Promotion Order</i> (Interpretation: communications) applied to them.	
(2)	directed only at	
	(a)	If all the conditions set out in (c) are met, a communication is to be regarded as "directed only at" a certain <i>group of persons</i> .
	(b)	In any other case in which one or more of those conditions are met, that fact is to be taken into account in determining whether the communication is directed only at a certain <i>group of persons</i> (but a communication may still be regarded as so directed even if none of the conditions in (c) are met).
	(c)	The conditions are that:
	(i)	the communication includes an indication of the description of <i>persons</i> to whom it is directed and an indication of the fact that the <i>investment</i> or service to which it relates is available only to such <i>persons</i> ;
	(ii)	the communication includes an indication that <i>persons</i> of any other description should not rely upon it;
	(iii)	there are in place proper systems and procedures to prevent recipients other than <i>persons</i> to whom it is directed engaging in the investment activity, or participating in the <i>collective investment scheme</i> , to which the communication relates with the <i>person</i> directing the communication, a <i>close relative</i> of his or a member of the same <i>group</i> .
(3)	communicated to a <i>person</i> inside or outside the <i>United Kingdom</i>	
	(a)	a <i>financial promotion</i> is communicated to a <i>person</i> outside the <i>United Kingdom</i> if it is:
	(i)	made to a <i>person</i> who receives it outside the <i>United Kingdom</i> ; or

	(ii)	directed only at <i>persons</i> outside the <i>United Kingdom</i> ; and
	(b)	a <i>financial promotion</i> is communicated to a <i>person</i> inside the <i>United Kingdom</i> if it is communicated to a <i>person</i> other than as described in (a);
and see (2), above, which amplifies this <i>rule</i> .		
(4)	directed only at <i>persons</i> outside the <i>United Kingdom</i>	
	(a)	If the conditions set out in (d)(i), (ii), (iii) and (iv) are met, a <i>financial promotion</i> directed from a place inside the <i>United Kingdom</i> will be regarded as directed only at <i>persons</i> outside the <i>United Kingdom</i> .
	(b)	If the conditions set out in (d)(iii) and (iv) are met a <i>financial promotion</i> directed from a place outside the <i>United Kingdom</i> will be regarded as directed only at <i>persons</i> outside the <i>United Kingdom</i> .
	(c)	In any other case in which one or more of the conditions in (d)(i) to (v) is met, that fact will be taken into account in determining whether a <i>financial promotion</i> is directed only at <i>persons</i> outside the <i>United Kingdom</i> (but a <i>financial promotion</i> may still be regarded as directed only at <i>persons</i> outside the <i>United Kingdom</i> even if none of these conditions is met).
	(d)	The conditions are that:
	(i)	the <i>financial promotion</i> is accompanied by an indication that it is directed only at <i>persons</i> outside the <i>United Kingdom</i> ;
	(ii)	the <i>financial promotion</i> is accompanied by an indication that it must not be acted upon by <i>persons</i> in the <i>United Kingdom</i> ;
	(iii)	the <i>financial promotion</i> is not referred to in, or directly accessible from, any other <i>financial promotion</i> which is made to a <i>person</i> or directed at <i>persons</i> in the <i>United Kingdom</i> by the same <i>person</i> ;
	(iv)	there are in place proper systems and procedures to prevent recipients in the <i>United Kingdom</i> (other than those to whom the <i>financial promotion</i> might otherwise lawfully have been made) engaging in the investment activity to which the <i>financial promotion</i> relates with the <i>person</i> directing the <i>financial promotion</i> , a <i>close</i>

			<i>relative of his or a member of the same group;</i>
	(v)		the <i>financial promotion</i> is included in:
		(A)	a website, newspaper, journal, magazine or periodical publication which is principally accessed in or intended for a market outside the <i>United Kingdom</i> ;
		(B)	a radio or television broadcast or teletext service transmitted principally for reception outside the <i>United Kingdom</i> .

6 Distance communications

6.1 The information and other requirements of the Distance Marketing Directive

The distance marketing disclosure rules

- 6.1.1 R A *firm* must provide a *consumer* with the *distance marketing information*, the contractual terms and conditions and any other pre-contractual information required to be provided by a *rule* in the *Handbook*, in a *durable medium* and in good time before the *consumer* is bound by a *distance contract* or offer.

[Note: articles 3(1) and 5(1) of the *Distance Marketing Directive*]

- 6.1.2 R The *distance marketing information*, the commercial purpose of which must be made clear, must be provided in a clear and comprehensible manner in any way appropriate to the *means of distance communication* used.

[Note: article 3(2) of the *Distance Marketing Directive*]

- 6.1.3 R When a *firm* makes a *voice telephony communication* to a *consumer*, it must also make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

- 6.1.4 R A *firm* must ensure that the information on contractual obligations provided to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations that will result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

6.1.5 [intentionally blank]

6.1.6 [intentionally blank]

6.1.7 [intentionally blank]

6.1.8 [intentionally blank]

Exception: voice telephony communications

6.1.9 R In the case of a *voice telephony communication*, and subject to the explicit consent of the *consumer*, only the *abbreviated distance marketing information* must be provided during that communication. However, a *firm* must still comply with the *distance marketing disclosure rules*, unless another exception applies.

[Note: articles 3(3) and 5(1) of the *Distance Marketing Directive*]

6.1.10 [intentionally blank]

6.1.11 [intentionally blank]

6.1.12 [intentionally blank]

6.1.13 [intentionally blank]

6.1.14 [intentionally blank]

6.2 [intentionally blank]

COBS 6 Annex 1R [intentionally blank]

COBS 6 Annex 2R: Abbreviated distance marketing disclosure

This Annex belongs to *COBS 6.1.9R*

- (1) The identity of the *person* in contact with the *consumer* and his link with the supplier.
- (2) A description of the main characteristics of the financial service.
- (3) The total price to be paid by the *consumer* to the supplier for the financial service including all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (4) Notice of the possibility that other taxes and/or costs may exist that are not paid via the supplier or imposed by him.
- (5) The existence or absence of a right to cancel or withdraw in accordance with the *cancellation rules* and, where the right to cancel or withdraw exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay on the

basis of the *cancellation rules*.

- (6) That other information is available on request and of what the nature of that information is.

[Note: article 3(3)(b) of the *Distance Marketing Directive*]

7 Information about the firm, its services and remuneration

7.1 Information about the firm and compensation information

Application

- 7.1.1 R (1) This section applies to a *firm* that carries on *designated investment business* for:
- (a) a *retail client*; and
 - (b) in the case of *MiFID business* or the *equivalent business of a third country investment firm*, a *client*.
- (2) If expressly provided, this section also applies to *ancillary services* not covered by (1) but only in the course of a *MiFID business* or the *equivalent business of a third country investment firm* carried on with or for a *client*.
- 7.1.2 [intentionally blank]
- 7.1.3 [intentionally blank]
- 7.1.4 R A *firm* must provide a *retail client* with the following general information, if relevant:
- (1) the name and address of the *firm*, and the contact details necessary to enable a *client* to communicate effectively with the *firm*;
 - (2) the languages in which the *client* may communicate with the *firm*, and receive documents and other information from the *firm*;
 - (3) the methods of communication to be used between the *firm* and the *client* including, where relevant, those for the sending and reception of orders;
 - (4) a statement of the fact that the *firm* is authorised and the name and contact address of the *competent authority* that has authorised it;
 - (5) if the *firm* is acting through an *appointed representative* or, where applicable, a *tied agent*, a statement of this fact specifying the *EEA State* in which that *appointed representative* or *tied agent* is registered;

- (6) the nature, frequency and timing of the reports on the performance of the service to be provided by the *firm* to the *client* in accordance with the *rule* on reporting to *clients* on the provision of services (*COBS 17*);
- (7) if the *firm* holds *designated investments* belonging to a *client* or *client money*, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the *firm* by virtue of its activities in an *EEA State*;
- (8) a description, which may be provided in summary form, of the *conflicts of interest policy*;
- (9) at any time that the *client* requests it, further details of the *conflicts of interest policy*.

[Note: article 30(1) of the *MiFID implementing Directive*]

7.1.5 [intentionally blank]

- 7.1.6 R
- (1) A *firm* that *manages investments* for a *client* must establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the *client* and the types of *designated investments* included in the *client* portfolio, so as to enable the *client* to assess the *firm's* performance.
 - (2) If a *firm* proposes to *manage investments* for a *retail client*, the *firm* must provide the *client* with such of the following information as is applicable:
 - (a) information on the method and frequency of valuation of the *designated investments* in the *client* portfolio;
 - (b) details of any delegation of the discretionary management of all or part of the *designated investments* or funds in the *client* portfolio;
 - (c) a specification of any benchmark against which the performance of the *client* portfolio will be compared;
 - (d) the types of *designated investments* that may be included in the *client* portfolio and types of transaction that may be carried out in those *designated investments*, including any limits; and
 - (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

[Note: article 30(2) and (3) of the *MiFID implementing Directive*]

Information concerning safeguarding of designated investments belonging to clients and client money

- 7.1.7 R (1) A *firm* that holds a *designated investments* or *client money* for a *retail client* must provide that *client* with the following information:
- (a) if applicable,
 - (i) that the *designated investments* or *client money* of that *client* may be held by a third party on behalf of the *firm*;
 - (ii) the responsibility of the *firm* under the applicable national law for any acts or omissions of the third party; and
 - (iii) the consequences for the *client* of the insolvency of the third party;
 - (b) if applicable, that the *designated investments* belonging to the *retail client* may be held in an omnibus account by a third party and a prominent warning of the resulting risks;
 - (c) if it is not possible under national law for *designated investments* belonging to a *client* held with a third party to be separately identifiable from the proprietary *designated investments* of that third party or of the *firm*, that fact and a prominent warning of the resulting risks;
 - (d) if applicable, that accounts that contain *designated investments* or *client money* belonging to that *client* are or will be subject to the law of a jurisdiction other than that of a *EEA State*, an indication that the rights of the *client* relating to those instruments or money may differ accordingly;
 - (e) if applicable, information about the existence and the terms of any security interest or lien which the *firm* has or may have over the *client's designated investments* or *client money*, or any right of set-off it holds in relation to the *client's designated investments* or *client money*; and
 - (f) if applicable, that a depositary may have a security interest or lien over, or right of set-off in relation to those instruments or money.
- (2) Such a *firm* must also, before entering into *securities financing transactions* in relation to *designated investments* held by it on behalf of a *retail client*, or before otherwise using such *designated investments* for its own account or the account of another *client*, in good time before the use of those *designated investments* provide the *client*, in a *durable medium*, with clear, full and accurate information

on the obligations and responsibilities of the *firm* with respect to the use of those *designated investments*, including the terms for their restitution, and on the risks involved.

- (3) A *firm* that holds *client designated investments* or *client money* for a *professional client* must provide that *client* with the information in paragraphs (1)(d)(e) and (f).

[Note: article 29(3) and 32 of the *MiFID implementing Directive*]

Information about costs and associated charges

7.1.8 R A *firm* must provide a *retail client* with information on costs and associated charges including, if applicable:

- (1) the total price to be paid by the *client* in connection with the *designated investment* or the *designated investment business* or *ancillary service*, including all related fees, commissions, charges and expenses, and all taxes payable via the *firm* or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the *client* can verify it. The commissions charged by the *firm* must be itemised separately in every case;
- (2) if any part of the total price referred to paragraph (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;
- (3) notice of the possibility that other costs, including taxes, related to transactions in connection with the *designated investment* or the *designated investment business* may arise for the *client* that are not paid via the *firm* or imposed by it; and
- (4) the arrangements for payment or other performance.

[Note: article 33 of the *MiFID implementing Directive*]

7.1.9 [intentionally blank]

Timing of disclosure

- 7.1.10 R
- (1) A *firm* must provide a *client* with the information required by this section in good time before the provision of *designated investment business* or *ancillary services* unless otherwise provided by this *rule*.
 - (2) A *firm* may instead provide that information immediately after starting to provide *designated investment business* or *ancillary services* if:
 - (a) the *firm* was unable to comply with paragraph (1) because, at the request of the *client*, the agreement was concluded using a *means of distance communication* which prevented the *firm*

from doing so; and

- (b) in any case where the *rule on voice telephony communications* does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if that *client* were a *consumer*.

[Note: article 29(2) and 29(5) of the *MiFID implementing Directive*]

7.1.11 [intentionally blank]

Medium of disclosure

- 7.1.12 R Except where expressly provided, a *firm* must provide the information required by this section in a *durable medium* or via a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.

[Note: article 29(4) of the *MiFID implementing Directive*]

Changes to information provided to the client

- 7.1.13 R (1) A *firm* must notify a *client* in good time about any material change to the information provided under this section which is relevant to a service that the *firm* is providing to that *client*.
- (2) A *firm* must provide this notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

[Note: article 29(6) of the *MiFID implementing Directive*]

7.1.14 [intentionally blank]

7.2 [intentionally blank]

7.3 [intentionally blank]

7.4 [intentionally blank]

COBS 7 Annex 1 [intentionally blank]

COBS 7 Annex 2 [intentionally blank]

COBS 7 Annex 3 [intentionally blank]

COBS 7 Annex 4 [intentionally blank]

COBS 7 Annex 5 [intentionally blank]

COBS 7 Annex 6 [intentionally blank]

Chapter 8 [intentionally blank]

9 Client Agreements

9.1 Client Agreements: designated investment business

- 9.1.1 R (1) This chapter applies to a *firm* in relation to *designated investment business* carried on for:
- (a) a *retail client*; and
 - (b) in relation to *MiFID business* or the *equivalent business of a third country investment firm*, any other *client*.
- (2) If expressly provided, this section also applies to a *firm* in relation to other *ancillary services* carried on for a *client*, but only in relation to its *MiFID business* or the *equivalent business of a third country investment firm*.

- 9.1.2 R If a *firm* carries on *designated investment business*, other than *advising on investments*, with or for a new *retail client*, the *firm* must enter into a written basic agreement, on paper or another *durable medium*, with the *client* setting out the essential rights and obligations of the *firm* and the *client*.

[Note: article 39 of the *MiFID implementing Directive*]

- 9.1.3 R (1) A *firm* must, in good time before a *retail client* is bound by any agreement relating to *designated investment business* or *ancillary services* or before the provision of those services, whichever is the earlier, provide that *client* with:
- (a) the terms of any such agreement; and
 - (b) the information about the *firm* and its services relating to that agreement or to those services required by *COBS 7.1.4R*, including information on communications, conflicts of interest and authorised status.
- (2) A *firm* must provide the agreement and information in a *durable medium* or, where the *website conditions* are satisfied, otherwise via a website.
- (3) A *firm* may provide the agreement and the information immediately after the *client* is bound by any such agreement if:
- (a) the *firm* was unable to comply with paragraph (1) because, at the request of the *client*, the agreement was concluded

using a *means of distance communication* which prevented the *firm* from doing so; and

- (b) if the *rule on voice telephony communications* does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if he were a *consumer*.
- (4) (a) A *firm* must notify a *client* in good time about any material change to the information provided under this *rule* which is relevant to a service that the *firm* is providing to that *client*.
- (b) A *firm* must provide the notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

[Note: article 29(1), (4), (5) and (6) of the *MiFID implementing Directive*]

Record keeping: client agreements

- 9.1.4 R (1) A *firm* must establish a record that includes the document or documents agreed between it and a *client* that set out the rights and obligations of the parties, and the other terms on which it will provide services to the *client*.
- (2) The record must be maintained for at least whichever is the longer of:
- (a) 5 years; or
 - (b) the duration of the relationship with the *client*,
 - (c) in the case of a record relating to a *pension transfer*, *pension opt-out* or *FSAVC*, indefinitely.

[Note: article 19(7) of *MiFID* and article 51(1) of the *MiFID implementing Directive*. See article 51(3) of *MiFID implementing Directive*]

- 9.1.5 R For the purposes of this chapter a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.

[Note: article 19(7) of *MiFID* and article 39 of the *MiFID implementing Directive*]

9.1.6 [intentionally blank]

10 Identifying client needs and advising

10.1 Application and purpose provisions

Making personal recommendations

10.1.1 R This chapter applies to a *firm* which makes a *personal recommendation* in relation to a *designated investment*.

10.1.2 [intentionally blank]

Managing investments

10.1.3 R This chapter applies to a *firm* which *manages investments*.

10.1.4 [intentionally blank]

10.1.5 [intentionally blank]

10.1.6 [intentionally blank]

10.1.7 [intentionally blank]

10.1.8 [intentionally blank]

10.2 Assessing suitability

Assessing suitability: the obligations

10.2.1 R (1) A *firm* must take reasonable steps to ensure that a *personal recommendation*, or a decision to trade, is suitable for its *client*.

(2) When making the *personal recommendation* or *managing his investments*, the *firm* must obtain the necessary information regarding the *client's*:

- (a) knowledge and experience in the investment field relevant to the specific type of *designated investment* or service;
- (b) financial situation; and
- (c) investment objectives;

so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for him.

[Note: article 19(4) of *MiFID*, article 12(2) of the *Insurance Mediation Directive*]

10.2.2 R (1) A *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided that the specific transaction to be recommended, or entered into in the course of managing:

- (a) meets his investment objectives;

- (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
 - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a *client* must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.
- (3) The information regarding the financial situation of a *client* must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

[Note: article 35(1), (3) and (4) of the *MiFID implementing Directive*]

10.2.3 R The information regarding a *client's* knowledge and experience in the investment field includes, to the extent appropriate to the nature of the *client*, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and *designated investment* with which the *client* is familiar;
- (2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the *client*.

[Note: article 37(1) of the *MiFID implementing Directive*]

10.2.4 R A *firm* must not encourage a *client* not to provide information for the purposes of its assessment of suitability.

[Note: article 37(2) of the *MiFID implementing Directive*]

10.2.5 R A *firm* is entitled to rely on the information provided by its *clients* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 37(3) of the *MiFID implementing Directive*]

10.2.6 R If a *firm* does not obtain the necessary information to assess suitability, it must not make a *personal recommendation* to the *client* or take a decision to

trade for him.

[Note: article 35(5) of the *MiFID implementing Directive*]

Professional clients (MiFID business and the equivalent business of a third country investment firm)

- 10.2.7 R (1) If a *firm* makes a *personal recommendation* or *manages investments* for a *professional client* in the course of *MiFID business* or the *equivalent business of a third country investment firm*, it is entitled to assume that, in relation to the products, transactions and services for which the *professional client* is so classified, the *client* has the necessary level of experience and knowledge for the purposes of *COBS 10.2.2R(1)(c)*.
- (2) If the service consists of making a *personal recommendation* to a *per se professional client*, the *firm* is entitled to assume that the *client* is able financially to bear any related investment risks consistent with his investment objectives for the purposes of *COBS 10.2.2R(1)(b)*.

[Note: article 35(2) of the *MiFID implementing Directive*]

10.2.8 [intentionally blank]

10.3 Guidance on assessing suitability

- 10.3.1 G (1) A transaction may be unsuitable for a *client* because of the risks of the *designated investments* involved, the type of transaction, the characteristics of the order or the frequency of the trading.
- (2) In the case of *managing investments*, a transaction might also be unsuitable if it would result in an unsuitable portfolio.

[Note: recital 57 to the *MiFID implementing Directive*]

Churning and switching

- 10.3.2 G (1) A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.
- (2) [intentionally blank]

[Note: recital 57 to the *MiFID implementing Directive*]

10.3.3 [intentionally blank]

10.3.4 [intentionally blank]

10.4 [intentionally blank]

10.5 [intentionally blank]

10.6 [intentionally blank]

COBS 10 Annex 1 [intentionally blank]

11 Non-advised services

11.1 Application and purpose provisions

11.1.1 R This chapter applies to a *firm* which provides *investment services* in the course of *MiFID business* or the *equivalent business of a third country investment firm* other than making a *personal recommendation and managing investments*.

11.1.2 [intentionally blank]

11.1.3 R This chapter applies to a *firm* which assesses appropriateness on behalf of another *MiFID investment firm* so that the other *firm* may rely on the assessment under *COBS 2.4.4R* (Reliance on other investment firms: MiFID and equivalent business).

11.1.4 [intentionally blank]

11.2 Assessing appropriateness: the obligations

11.2.1 R (1) When providing a service to which this chapter applies, a *firm* must ask the *client* to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the *firm* to assess whether the service or product envisaged is appropriate for the *client*.

(2) When assessing appropriateness, a *firm*:

(a) must determine whether the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded;

(b) may assume that a *professional client* has the necessary experience and knowledge in order to understand the risks involved in relation to those particular *investment services* or transactions, or types of transaction or product, for which the

client is classified as a *professional client*.

[Note: article 19(5) of *MiFID* and article 36 of the *MiFID implementing Directive*]

11.2.2 R The information regarding a *client's* knowledge and experience in the investment field includes, to the extent appropriate to the nature of the *client*, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and *designated investment* with which the *client* is familiar;
- (2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the *client*.

[Note: article 37(1) of the *MiFID implementing Directive*]

11.2.3 R A *firm* must not encourage a *client* not to provide information required for the purposes of its assessment of appropriateness.

[Note: article 37(2) of the *MiFID implementing Directive*]

11.2.4 R A *firm* is entitled to rely on the information provided by a *client* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 37(3) of the *MiFID implementing Directive*]

11.2.5 [intentionally blank]

11.2.6 [intentionally blank]

11.2.7 [intentionally blank]

11.2.8 [intentionally blank]

11.3 Warning the client

11.3.1 R (1) If a *firm* considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the *client*, the *firm* must warn the *client*.

(2) This warning may be provided in a standardised format.

[Note: article 19(5) of *MiFID*]

- 11.3.2 R (1) If the *client* elects not to provide the information to enable the *firm* to assess appropriateness, or if he provides insufficient information regarding his knowledge and experience, the *firm* must warn the *client* that such a decision will not allow the *firm* to determine whether the service or product envisaged is appropriate for him.
- (2) This warning may be provided in a standardised format.

[Note: article 19(5) of *MiFID*]

11.3.3 [intentionally blank]

11.4 Assessing appropriateness: when it need not be done

- 11.4.1 R (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if:
- (a) the service relates to particular *financial instruments*;
 - (b) the service is provided at the initiative of the *client*;
 - (c) the *client* has been clearly informed (whether the warning is given in a standardised format or not) that in the provision of this service the *firm* is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the protection of the *rules* on assessing suitability; and
 - (d) the *firm* complies with its obligations in relation to conflicts of interest.
- (2) The *financial instruments* are:
- (a) shares admitted to trading on a *regulated market* or an equivalent third country market (that is, one which is included in the list which is published by the European Commission and updated periodically); or
 - (b) money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a *derivative*); or
 - (c) *units* in a *scheme* authorised under the *UCITS directive*; or
 - (d) other non-complex *financial instruments*.
- (3) A *financial instrument* is non-complex if it satisfies the following

criteria:

- (a) it is not a *derivative* or other security giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
- (b) there are frequent opportunities to dispose of, redeem, or otherwise realise the instrument at prices that are publicly available to the market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;
- (c) it does not involve any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument; and
- (d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average *retail client* to make an informed judgment as to whether to enter into a transaction in that instrument.

[Note: article 19(6) of *MiFID* and article 38 of the *MiFID implementing Directive*]

- 11.4.2 R If a *client* engages in a course of dealings involving a specific type of product or service through the services of a *firm*, the *firm* is not required to make a new assessment on the occasion of each separate transaction. A *firm* complies with the *rules* in this chapter provided that it makes the necessary appropriateness assessment before beginning that service.

[Note: recital 59 to the *MiFID implementing Directive*]

11.5 Assessing appropriateness: guidance

The initiative of the client

- 11.5.1 G A service should be considered to be provided at the initiative of a *client* (see *COBS* 11.4.1R(1)(b)) unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that particular *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument* or specific transaction.

[Note: recital 30 to *MiFID*]

- 11.5.2 G A service can be considered to be provided at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion or offer of *financial instruments* made by any means that by its very nature is general and addressed to the

public or a larger group or category of *clients*.

[Note: recital 30 to *MiFID*]

11.5.3 [intentionally blank]

11.5.4 [intentionally blank]

Independent valuation systems

11.5.5 G The circumstances in which valuation systems will be independent of the issuer (see *COBS* 11.4.1R(3)(b)) include where they are overseen by a depositary that is regulated as a provider of depositary services in a *EEA State*.

[Note: recital 61 to the *MiFID implementing Directive*]

11.6 [intentionally blank]

12 Dealing and managing

12.1 Application

General application

12.1.1 R This chapter other than the sections on the use of dealing commission (*COBS* 12.6) and personal account dealing (*COBS* 12.7) applies in relation to:

- (1) *MiFID business* carried on by a *MiFID investment firm*; or
- (2) *equivalent business of a third country investment firm*.

12.1.2 R In this chapter, provisions marked "EU" apply to a *third country investment firm* as if they were rules.

12.1.3 [intentionally blank]

Application to section on personal account dealing

12.1.4 R The section on personal account dealing applies to the *designated investment business* of a *firm* in relation to activities carried on from an *establishment* in the *United Kingdom*.

12.1.5 G The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see *COBS* 12.7) to the extent necessary to be compatible with European law (see Paragraph 1.1 of Part 3 of *COBS App 1*). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment*

firm from a *branch* in another *EEA state*, but does not apply to the *UK branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*.

12.2 Best Execution

Obligation to execute orders on terms most favourable to the client

12.2.1 R A *firm* must take all reasonable steps to obtain, when executing orders, the best possible result for its *clients* taking into account the *execution factors*.

[Note: article 21 (1) of *MiFID*]

12.2.2 G The obligation to take all reasonable steps to obtain the best possible result for its *clients* should apply to a *firm* which owes contractual or agency obligations to the *client*.

[Note: recital 33 to *MiFID*]

12.2.3 G Dealing on own account with *clients* by a *firm* should be considered as the execution of *client* orders, and therefore subject to the requirements under *MiFID*, in particular, those obligations in relation to best execution.

[Note: first sentence of recital 69 to the *MiFID implementing Directive*]

12.2.4 G If a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all reasonable steps to obtain the best possible result for its *clients* if the *firm* executed that quote at the time the quote was provided, the *firm* will meet those same obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

[Note: second sentence of recital 69 to the *MiFID implementing Directive*]

12.2.5 G The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures or the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of *financial instruments*. For example, transactions involving a customised OTC *financial instrument* that involve a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving shares traded on centralised *execution venues*.

[Note: recital 70 to the *MiFID implementing Directive*]

Best execution criteria

- 12.2.6 R When executing a *client* order, a *firm* must take into account the following criteria for determining the relative importance of the *execution factors*:
- (1) the characteristics of the *client* including the categorisation of the *client* as retail or professional;
 - (2) the characteristics of the *client* order;
 - (3) the characteristics of *financial instruments* that are the subject of that order;
 - (4) the characteristics of the *execution venues* to which that order can be directed.

[Note: article 44(1) of the *MiFID implementing Directive*]

Role of price

- 12.2.7 R Where a *firm* executes an order on behalf of a *retail client*, the best possible result must be determined in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution, which must include all expenses incurred by the *client* which are directly related to the execution of the order, including *execution venue* fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

[Note: paragraph 1 of article 44(3) of the *MiFID implementing Directive*]

- 12.2.8 G For the purposes of ensuring that a *firm* obtains the best possible result for the *client* when executing a *retail client* order in the absence of specific *client* instructions, the *firm* should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution. Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.

[Note: recital 67 to the *MiFID implementing Directive*]

- 12.2.9 [intentionally blank]

Delivering best execution where there are competing execution venues

- 12.2.10 R For the purposes of delivering best execution for a *retail client* where there is more than one competing venue to execute an order for a *financial instrument*, in order to assess and compare the results for the *client* that would be achieved by executing the order on each of the *execution venues* listed in the *firm's* order execution policy that is capable of executing that

order, the *firm's* own commissions and costs for executing the order on each of the eligible *execution venues* must be taken into account in that assessment.

[Note: article 44(3) of paragraph 2 of the *MiFID implementing Directive*]

- 12.2.11 G The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a *firm* to compare the differences in its own commissions which are attributable to differences in the nature of the services that the *firm* provides to *clients*.

[Note: recital 71 to the *MiFID implementing Directive*]

- 12.2.12 R A *firm* must not structure or charge its commissions in such a way as to discriminate unfairly between *execution venues*.

[Note: article 44(4) of the *MiFID implementing Directive*]

- 12.2.13 G A *firm* would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charges a different commission or spread to *clients* for execution on different *execution venues* and that difference does not reflect actual differences in the cost to the *firm* of executing on those venues.

[Note: recital 73 to the *MiFID implementing Directive*]

Requirement for an order execution policy

- 12.2.14 R A *firm* must establish and implement effective arrangements for complying with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, for its *client* orders, the best possible result in accordance with that obligation.

[Note: article 21(2) of *MiFID*]

- 12.2.15 R The order execution policy must include, in respect of each class of *financial instruments*, information on the different *execution venues* where the *firm* executes its *client* orders and the factors affecting the choice of *execution venue*. It must at least include those *execution venues* that enable the *firm* to obtain on a consistent basis the best possible result for the execution of *client* orders.

[Note: paragraph 1 of article 21(3) of *MiFID*]

- 12.2.16 G (1) When establishing its execution policy, a *firm* should determine the relative importance of the *execution factors*, or at least establish the

process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its *clients*.

- (2) In order to give effect to that policy, a *firm* should select the *execution venues* that enable it to obtain on a consistent basis the best possible result for the execution of *client* orders.
- (3) A *firm* should apply its execution policy to each *client* order that it executes with a view to obtaining the best possible result for the *client* in accordance with that policy.
- (4) The obligation to take all reasonable steps to obtain the best possible result for the *client* should not be treated as requiring a *firm* to include in its execution policy all available *execution venues*.

[Note: recital 66 to the *MiFID implementing Directive*]

- 12.2.17 G The provisions of this section that provide that costs of execution include a *firm's* own commissions or fees charged to the *client* for the provision of an *investment service* should not apply for the purpose of determining what *execution venues* must be included in the *firm's* execution policy.

[Note: recital 72 to the *MiFID implementing Directive*]

- 12.2.18 G The provisions of this section as to execution policy are without prejudice to the general obligation of a *firm* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

[Note: recital 74 to the *MiFID implementing Directive*]

Following specific instructions from a client

- 12.2.19 R (1) Whenever there is a specific instruction from the *client*, the *firm* must execute the order following the specific instruction.

[Note: article 21(1) of *MiFID*]

- (2) A *firm* satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a *client* to the extent that it executes an order or a specific aspect of an order following specific instructions from the *client* relating to the order or the specific aspect of the order.

[Note: article 44(2) of the *MiFID implementing Directive*]

- 12.2.20 G When a *firm* executes an order following specific instructions from the *client*, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the *client* instructions relate. The fact that the *client* has given specific instructions which cover one part or aspect of the order should not be treated as releasing the *firm* from its best execution obligations in respect of any other

parts or aspects of the *client* order that are not covered by such instructions.

[Note: recital 68 to the *MiFID implementing Directive*]

- 12.2.21 G A *firm* should not induce a *client* to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the *client*, when the *firm* ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that *client*. However, this should not prevent a *firm* inviting a *client* to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the *firm*.

[Note: recital 68 to the *MiFID implementing Directive*]

Information about the order execution policy

- 12.2.22 R A *firm* must provide appropriate information to its *clients* on its order execution policy.

[Note: paragraph 2 of article 21(3) of *MiFID*]

- 12.2.23 R A *firm* must provide a *retail client* with the following details on its execution policy in good time prior to the provision of the service:

- (1) an account of the relative importance the *firm* assigns, in accordance with the *execution criteria*, to the *execution factors*, or the process by which the *firm* determines the relative importance of those factors;
- (2) a list of the *execution venues* on which the *firm* places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of *client* orders;
- (3) a clear and prominent warning that any specific instructions from a *client* may prevent the *firm* from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

That information must be provided in a *durable medium*, or by means of a website (where that does not constitute a *durable medium*) provided that the *website conditions* are satisfied.

[Note: article 46(2) of the *MiFID implementing Directive*]

- 12.2.24 R Where the order execution policy provides for the possibility that *client* orders may be executed outside a *regulated market* or an *MTF*, the *firm* must, in particular, inform its *clients* about this possibility.

[Note: paragraph 3 of article 21(3) of *MiFID*]

Client consent to execution policy and execution of orders outside a regulated market or MTF

12.2.25 R A *firm* must obtain the prior consent of its *clients* to the execution policy.

[Note: paragraph 2 of article 21 (3) of *MiFID*]

12.2.26 R A *firm* must obtain the prior express consent of its *clients* before proceeding to execute their orders outside a *regulated market* or an *MTF*. The *firm* may obtain this consent either in the form of a general agreement or in respect of individual transactions.

[Note: paragraph 3 of article 21(3) of *MiFID*]

Monitoring the effectiveness of execution arrangements and policy

12.2.27 R A *firm* must monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements. The *firm* must notify *clients* of any material changes to their order execution arrangements or execution policy.

[Note: article 21(4) of *MiFID*]

Review of the order execution policy

12.2.28 R A *firm* must review annually its execution policy, as well as its order execution arrangements.

Such a review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for the execution of its *client* orders on a consistent basis using the venues included in its execution policy.

[Note: article 46(1) of the *MiFID implementing Directive*]

Demonstration of execution of orders in accordance with execution policy

12.2.29 R A *firm* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.

[Note: article 21(5) of *MiFID*]

Duty of portfolio managers and receivers and transmitters to act clients' best interests

12.2.30 R A *firm* must, when providing the service of *portfolio management*, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from

decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

[Note: article 45(1) of *MiFID implementing Directive*]

- 12.2.31 R A *firm* must, when providing the service of reception and transmission of orders, comply with the obligation to act in accordance with the best interests of its *clients* when transmitting *client* orders to other entities for execution.

[Note: article 45(2) of the *MiFID implementing Directive*]

- 12.2.32 R In order to comply with the obligation to act in accordance with the best interests of its *clients* when it places an order with, or transmits an order to, another entity for execution, a *firm* must:

[Note: article 45(3) of the *MiFID implementing Directive*]

- (1) take all reasonable steps to obtain the best possible result for its *clients* taking into account the *execution factors*. The relative importance of these factors must be determined by reference to the *execution criteria* and, for retail clients, to the requirement to determine the best possible result in terms of the total consideration (see *COBS 12.2.7R*).

A *firm* satisfies its obligation to act in accordance with the best interests of its *clients*, and is not required to take the steps mentioned above, to the extent that it follows specific instructions from its *client* when placing an order with, or transmitting an order to, another entity for execution;

[Note: paragraph 1 and 2 of article 45(4) of the *MiFID implementing Directive*]

- (2) establish and implement a policy to enable it to comply with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. The policy must identify, in respect of each class of instruments, the entities with which the orders are placed or to which the *firm* transmits orders for execution. The entities identified must have execution arrangements that enable the *firm* to comply with its obligations under this section when it places and order with, or transmits an order to, that entity for execution;

[Note: paragraph 1 of article 45(5) of the *MiFID implementing Directive*]

- (3) provide appropriate information to its *clients* on the policy established in accordance with this section;

[Note: paragraph 2 of article 45(5) of the *MiFID implementing Directive*]

- (4) monitor on a regular basis the effectiveness of the policy and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies; and

[Note: first paragraph of article 45(6) of the *MiFID implementing Directive*]

- (5) review the policy annually. Such a review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for its *clients*.

[Note: second paragraph of article 45(6) of the *MiFID implementing Directive*]

- 12.2.33 G This section is not intended to require a duplication of effort as to best execution between a *firm* which provides the service of reception and transmission of orders or *portfolio management* and any *firm* to which that *firm* transmits its orders for execution.

[Note: recital 75 to the *MiFID implementing Directive*]

- 12.2.34 R The provisions applying to a *firm* which places orders with, or transmits orders to, other entities for execution (see *COBS 12.2.30R* to *COBS 12.2.33G*) will not apply when the *firm* that provides the service of *portfolio management* and/or service of reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its *client's* portfolio. In those cases the requirements of this section for *firms* who execute orders apply (see *COBS 12.2.1R* to *COBS 12.2.29R*).

[Note: article 45(7) of the *MiFID implementing Directive*]

12.3 Client order handling

General principles

- 12.3.1 R (1) A *firm* which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client* orders, relative to other *client* orders or the trading interests of the *firm*.

[Note: paragraph 1 of article 22(1) of *MiFID*]

- (2) These procedures or arrangements must allow for the execution of otherwise comparable *client* orders in accordance with the time of their reception by the *firm*.

[Note: paragraph 2 of article 22(1) of *MiFID*]

- 12.3.2 R A *firm* must satisfy the following conditions when carrying out *client* orders:
- (1) it must ensure that orders executed on behalf of *clients* are promptly and accurately recorded and allocated;
- (2) it must carry out otherwise comparable *client* orders sequentially and promptly unless the characteristics of the order or prevailing market

conditions make this impracticable, or the interests of the *client* require otherwise;

- (3) it must inform a *retail client* about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

[Note: article 47(1) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.3 G Without prejudice to the *Market Abuse Directive*, for the purposes of the provisions of this section, *client* orders should not be treated as otherwise comparable if they are received by different media and it would not be practicable for them to be treated sequentially.

[Note: recital 78 to the *MiFID implementing Directive*]

- 12.3.4 R Where a *firm* is responsible for overseeing or arranging the settlement of an executed order, it must take all reasonable steps to ensure that any *client financial instruments* or *client* funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate *client*.

[Note: article 47(2) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.5 R A *firm* must not misuse information relating to pending *client* orders, and shall take all reasonable steps to prevent the misuse of such information by any of its *relevant persons*.

[Note: article 47(3) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.6 G For the purposes of the rule on the misuse of information (see *COBS* 12.3.5R), any use by a *firm* of information relating to a pending *client* order in order to deal on own account in the *financial instruments* to which the *client* order relates, or in related *financial instruments*, should be considered a misuse of that information. However, the mere fact that market makers or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling *financial instruments*, or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.

[Note: recital 78 to the *MiFID implementing Directive*]

Aggregation and allocation of orders

- 12.3.7 R A *firm* is not permitted to carry out a *client* order or a transaction for own account in aggregation with another *client* order unless the following conditions are met:

- (1) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any *client* whose order is to be aggregated;
- (2) it must be disclosed to each *client* whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
- (3) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

[Note: article 48(1) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.8 R If a *firm* aggregates an order with one or more other *client* orders and the aggregated order is partially executed, it must allocate the related trades in accordance with its order allocation policy.

[Note: article 48(2) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

Aggregation and allocation of transactions for own account

- 12.3.9 R A *firm* which has aggregated transactions for own account with one or more *client* orders must not allocate the related trades in a way which is detrimental to a *client*.

[Note: article 49(1) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.10 R
- (1) If a *firm* aggregates a *client* order with a transaction for own account and the aggregated order is partially executed, it must allocate the related trades to the *client* in priority to the *firm*.
 - (2) However, if the *firm* is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy.

[Note: article 49(2) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.11 R A *firm* must, as part of its order allocation policy, put in place procedures to prevent the reallocation, in a way that is detrimental to the *client*, of transactions for own account which are executed in combination with *client* orders.

[Note: article 49(3) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.12 G For the purposes of the provisions of this section, the reallocation of transactions should be considered as detrimental to a *client* if, as an effect of that reallocation, unfair precedence is given to the *firm* or to any particular *client*.

[Note: recital 77 to the *MiFID implementing Directive*]

- 12.3.13 [intentionally blank]

12.4 Client limit orders

Obligation to make unexecuted client limit orders public

- 12.4.1 R Unless a *client* expressly instructs otherwise, a *firm* must, in the case of a *client limit order* in respect of shares admitted to trading on a *regulated market* which are not immediately executed under prevailing market conditions, take measures to facilitate the earliest possible execution of that order by making public immediately that *client limit order* in a manner which is easily accessible to other market participants.

[Note: article 22(2) of *MiFID*]

- 12.4.2 G In respect of transactions executed between *eligible counterparties*, the obligation to disclose *client limit orders* should only apply where the counterparty is explicitly sending a *limit order* to a *firm* for its execution.

[Note: recital 42 to *MiFID*]

How client limit orders may be made public

- 12.4.3 EU An *investment firm* shall be considered to disclose *client limit orders* that are not immediately executable if it transmits the order to a *regulated market* or *MTF* that operates an order book trading system, or ensures that the order is made public and can be easily executed as soon as market conditions allow.

[Note: article 31 of *MiFID Regulation*]

- 12.4.4 [intentionally blank]

Orders that are large in scale

- 12.4.5 R The obligation to make public a *limit order* will not apply to a *limit order* that is large in scale compared with normal market size.

[Note: article 22(2) of *MiFID*]

- 12.4.6 [intentionally blank]

12.5 Record keeping: client orders and transactions

Record keeping of client orders and decisions to deal

12.5.1	EU	An <i>investment firm</i> shall, in relation to every order received from a <i>client</i> , and in relation to every decision to deal taken in providing the service of <i>portfolio management</i> , immediately make a record of the following details, to the extent they are applicable to the order or decision to deal in question:
	(a)	the name or other designation of the <i>client</i> ;
	(b)	the name or other designation of any relevant person acting on behalf of the <i>client</i> ;
	(c)	the details specified in point 4, 6, and in points 16 to 19, of Table 1 of Annex I;
	(d)	the nature of the order if other than buy or sell;
	(e)	the type of the order;
	(f)	any other details, conditions and particular instructions from the <i>client</i> that specify how the order must be carried out;
	(g)	the date and exact time of the receipt of the order, or of the decision to deal, by the <i>investment firm</i> .

[Note: article 7 of *MiFID Regulation*]

Record-keeping of transactions

12.5.2	EU	Immediately after executing a <i>client</i> order, or, in the case of <i>investment firms</i> that transmit orders to another person for execution, immediately after receiving confirmation that an order has been executed, <i>investment firms</i> shall record the following details of the transaction in question:
	(a)	the name or other designation of the <i>client</i> ;
	(b)	the details specified in points 2, 3, 4, 6, and in points 16 to 21, of Table 1 of Annex I;
	(c)	the total price, being the product of the unit price and the quantity;
	(d)	the nature of the transaction if other than buy or sell;
	(e)	the natural person who executed the transaction or who is responsible for the execution.

[Note: article 8(1) of *MiFID Regulation*]

12.5.3	EU	If an <i>investment firm</i> transmits an order to another person for execution, the
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<i>investment firm</i> shall immediately record the following details after making the transmission:	
(a)	the name or other designation of the <i>client</i> whose order has been transmitted;
(b)	the name or other designation of the person to whom the order was transmitted;
(c)	the terms of the order transmitted;
(d)	the date and exact time of transmission.

[Note: article 8(2) of *MiFID Regulation*]

12.5.4 EU

Points 2, 3, 4, 6, 16 – 21 of Table 1 of Annex 1 of the MiFID Regulation		
2.	Trading day	The trading day on which the transaction was executed.
3.	Trading time	The time at which the transaction was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
4.	Buy/sell indicator	Identifies whether the transaction was a buy or sell from the perspective of the reporting investment firm or, in the case of a report to a <i>client</i> , of the <i>client</i> .
6.	Instrument identification	This shall consist in: - a unique code to be decided by the competent authority (if any) to which the report is made identifying the <i>financial instrument</i> which is the subject of the transaction; - if the <i>financial instrument</i> in question does not have a unique identification code, the report must include the name of the instrument or, in the case of a derivative contract, the characteristics of the contract.
16.	Unit price	The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
17.	Price notation	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included.

18.	Quantity	The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of derivative contracts included in the transaction.
19.	Quantity notation	An indication as to whether the quantity is the number of units of financial instruments, the nominal value of bonds or the number of derivative contracts.
20.	Counterparty	<p>Identification of the counterparty to the transaction. That identification shall consist of:</p> <ul style="list-style-type: none"> - where the counterparty is an <i>investment firm</i>, a unique code for that firm, to be determined by the competent authority (if any) to which the report is made; - where the counterparty is a <i>regulated market</i> or <i>MTF</i> or an entity acting as its central counterparty, the unique harmonised identification code for that market, <i>MTF</i> or entity acting as central counterparty, as specified in the list published by the competent authority of the home Member State of that entity in accordance with Article 13(2); - where the counterparty is not an <i>investment firm</i>, a <i>regulated market</i>, an <i>MTF</i> or an entity acting as central counterparty, it should be identified as ‘customer/client’ of the <i>investment firm</i> which executed the transaction.
21.	Venue identification	<p>Identification of the venue where the transaction was executed. That identification shall consist in:</p> <ul style="list-style-type: none"> - where the venue is a trading venue: its unique harmonised identification code; - otherwise: the code ‘OTC’.

12.6 [intentionally blank]

12.7 Rule on personal account dealing

12.7.1 R A *firm* that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the *Market Abuse Directive* or to other confidential information relating to *clients* or transactions with or for *clients* by virtue of an activity carried out by him on behalf of the *firm*:

- (1) entering into a *personal transaction* which meets at least one of the following criteria:
 - (a) that *relevant person* is prohibited from entering into it under the *Market Abuse Directive*;
 - (b) it involves the misuse or improper disclosure of that confidential information;
 - (c) it conflicts or is likely to conflict with an obligation of the *firm* to a *customer* under the *regulatory system* or any other obligation of the *firm* under *MiFID*;
- (2) advising or procuring, other than in the proper course of his employment or contract for services, any other *person* to enter into a transaction in *designated investments* which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;
- (3) disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other *person* if the *relevant person* knows, or reasonably ought to know, that as a result of that disclosure that other *person* will or would be likely to take either of the following steps:
 - (a) to enter into a transaction in designated investments which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;
 - (b) to advise or procure another *person* to enter into such a transaction.

[Note: article 12(1) of *MiFID implementing Directive*]

- 12.7.2 R For the purposes of this section, the relevant provisions are:
- (1) the *rules on personal transactions* undertaken by *financial analysts* in *COBS 13.2.5 R (1) and (2)*;
 - (2) the *rule on the misuse information relating to pending client orders in COBS 12.3.5*.
- 12.7.3 [intentionally blank]
- 12.7.4 R The arrangements required under this *section* must in particular be designed to ensure that:
- (1) each *relevant person* covered by this *section* is aware of the restrictions on *personal transactions*, and of the measures established by the *firm* in connection with *personal transactions* and disclosure, in accordance with this *section*;

- (2) the *firm*:
 - (a) is informed promptly of any *personal transaction* entered into by a *relevant person*, either by notification of that transaction or by other procedures enabling the *firm* to identify such transactions; or
 - (b) in the case of *outsourcing* arrangements, ensures that the *service provider* to which the activity is *outsourced* maintains a record of *personal transactions* entered into by any *relevant person* and provides that information to the *firm* promptly on request;
- (3) a record is kept of the *personal transaction* notified to the *firm* or identified by it, including any authorisation or prohibition in connection with such a transaction.

[Note: article 12(2) of *MiFID implementing Directive*]

- 12.7.5 R This *section* does not apply to the following kinds of *personal transaction*:
- (1) *personal transactions* effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the *relevant person* or other *person* for whose account the transaction is executed;
 - (2) *personal transactions* in *units* or *shares* in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the *UCITS Directive* or are subject to supervision under the law of an *EEA State* which requires an equivalent level of risk spreading in their assets, where the *relevant person* and any other *person* for whose account the transactions are effected are not involved in the management of that undertaking;
 - (3) *personal transactions* in *life policies*.

[Note: article 12(3) of *MiFID implementing Directive*]

12.7.6 [intentionally blank]

- 12.7.7 R Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this *section* do not apply:
- (1) separately to each successive transaction if those instructions remain in force and unchanged; or
 - (2) to the termination or withdrawal of such instructions, provided that any *financial instruments* which had previously been acquired pursuant to the instructions are not disposed of at the same time as the instructions terminate or are withdrawn.

Obligations under this *section* do apply in relation to a *personal transaction*, or the commencement of successive *personal transactions*, that are carried out on behalf of the same *person* if those instructions are changed or if new instructions are issued.

[Note: *recital 17* to *MiFID implementing Directive*]

13 Investment Research

13.1 Purpose and Application

Purpose

13.1.1 G (1) The purpose of this chapter is to implement the provisions of *MiFID* relating to the production and dissemination of *investment research* and *non-independent research*.

(2) [intentionally blank]

Application

Who?

13.1.2 R This chapter applies in relation to *MiFID business* carried on by a *MiFID investment firm*.

Where?

13.1.3 G The *EEA territorial scope rule* modifies the general *rule* of application to the extent necessary to be compatible with European law (see paragraph 1.1. of Part 3 of *COBS App 1*). This means that *COBS 13.2* also applies to passported activities carried on by a *UK MiFID investment firm* from a *branch* into another *EEA state* but does not apply to the *United Kingdom branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*.

13.2 Investment Research

Application

13.2.1 R This section applies to a *firm* which produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, under its own responsibility or that of a member of its *group*.

[Note: article 25(1) of the *MiFID implementing Directive*]

13.2.2 [intentionally blank]

Measures and arrangements required for investment research

- 13.2.3 R A *firm* must ensure the implementation of all of the measures for managing conflicts of interest in SYSC 10.1.11 R in relation to the *financial analysts* involved in the production of *investment research* and other *relevant persons* whose responsibilities or business interests may conflict with the interests of the *persons* to whom *investment research* is disseminated.

[Note: article 25(1) of the *MiFID implementing Directive*]

13.2.4 [intentionally blank]

- 13.2.5 R A *firm* must have in place arrangements designed to ensure that the following conditions are satisfied:

- (1) if a *financial analyst* or other *relevant person* has knowledge of the likely timing or content of *investment research* which is not publicly available or available to *clients* and cannot readily be inferred from information that is so available, that *financial analyst* or other *relevant person* must not undertake *personal transactions* or trade on behalf of any other *person*, including the *firm*, other than:

(i) as *market maker* acting in good faith and in the ordinary course of market making; or

(ii) in the execution of an unsolicited *client* order,

in *financial instruments* to which the *investment research* relates, or in any *related financial instruments*, until the recipients of the *investment research* have had a reasonable opportunity to act on it;

[Note: article 25(2)(a) of the *MiFID implementing Directive*]

- (2) in circumstances not covered by (1), *financial analysts* and any other *relevant persons* involved in the production of *investment research* must not undertake *personal transactions* in *financial instruments* to which the *investment research* relates, or in any *related financial instrument*, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the *firm's* legal or compliance function;

[Note: article 25(2)(b) of the *MiFID implementing Directive*]

- (3) the *firm* itself, *financial analysts*, and other *relevant persons* involved in the production of *investment research* must not accept inducements from those with a material interest in the subject matter of the *investment research*;

[Note: article 25(2)(c) of the *MiFID implementing Directive*]

- (4) the *firm* itself, *financial analysts*, and other *relevant persons* involved

in the production of *investment research* must not promise issuers favourable research coverage; and

[Note: article 25(2)(d) of the *MiFID implementing Directive*]

- (5) issuers, *relevant persons* other than *financial analysts*, and any other *persons* must not, before the dissemination of *investment research*, be permitted to review a draft of the *investment research* for the purpose of verifying the accuracy of factual statements made in that *investment research*, or for any other purpose other than verifying compliance with the *firm's* legal obligations, if the draft includes a recommendation or a target price.

[Note: article 25(2)(e) of the *MiFID implementing Directive*]

13.2.5A [intentionally blank]

13.2.6 [intentionally blank]

13.2.7 [intentionally blank]

13.2.8 [intentionally blank]

13.2.9 [intentionally blank]

Exemption from investment research measures and arrangements

13.2.10 R A *firm* which disseminates *investment research* produced by another *person* to the public or to *clients* is exempt from complying with the requirements in *COBS* 13.2.3 R and *COBS* 13.2.5 R if the following criteria are met:

- (1) the *person* that produces the *investment research* is not a member of the *group* to which the *firm* belongs;
- (2) the *firm* does not substantially alter the recommendations within the *investment research*;
- (3) the *firm* does not present the *investment research* as having been produced by it; and
- (4) the *firm* verifies that the producer of the *investment research* is subject to requirements equivalent to those in *COBS* 13.2.3 R and *COBS* 13.2.5 R in relation to the production of that *investment research*, or has established a policy setting such requirements.

[Note: article 25(3) of the *MiFID implementing Directive*]

13.2.11 [intentionally blank]

13.2.12 [intentionally blank]

13.2.13 [intentionally blank]

13.3 Non-independent research

Application

13.3.1 R This section applies to a *firm* that produces or disseminates *non-independent research*.

[Note: article 24(2) of the *MiFID implementing Directive*]

Labelling of non-independent research

13.3.2 R A *firm* which produces or disseminates *non-independent research* must ensure that it:

- (1) is clearly identified as a marketing communication; and
- (2) contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it:
 - (a) has not been prepared in accordance with legal requirements designed to promote the independence of *investment research*; and
 - (b) is not subject to any prohibition on dealing ahead of the dissemination of *investment research*.

[Note: article 24(2) of the *MiFID implementing Directive*]

13.3.3 R The *financial promotion rules* apply to *non-independent research* as though it were a marketing communication.

[Note: article 24(2) of the *MiFID implementing Directive*]

13.3.4 [intentionally blank]

13.4 [intentionally blank]

Chapter 14 [intentionally blank]

15 Providing product information

15.1 [intentionally blank]

15.2 [intentionally blank]

15.3 Information about designated investments

15.3.1 R This section applies:

- (1) to a *firm* in relation to *MiFID business* or the *equivalent business of a third country investment firm*; and
- (2) to any other *firm* in relation to the following *regulated activities* when carried on for a *retail client*:
 - (a) making a *personal recommendation*;
 - (b) acting as a *discretionary investment manager*;
 - (c) *arranging (bringing about) or executing a deal* in a *warrant or derivative*; or
 - (d) engaging in *stock lending activity*.

Providing a description of the nature and risks of designated investments

15.3.2 R A *firm* must provide a *client* with a general description of the nature and risks of *designated investments*, taking into account, in particular, the *client's* categorisation as a *retail client* or a *professional client*. That description must:

- (1) explain the nature of the specific type of *designated investment*, as well as the risks particular to that specific type of *designated investment*, in sufficient detail to enable the *client* to take investment decisions on an informed basis; and
- (2) include, where relevant to the specific type of *designated investment* concerned and the status and level of knowledge of the *client*, the following elements:
 - (a) the risks associated with that type of *designated investment* including an explanation of leverage and its effects and the risk of losing the entire investment;
 - (b) the volatility of the price of *designated investments* and any limitations on the available market for such investments;
 - (c) the fact that an investor might assume, as a result of transactions in such *designated investments*, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the *designated investments*; and
 - (d) any margin requirements or similar obligations, applicable to *designated investments* of that type.

[Note: article 31(1) and (2) of the *MiFID implementing Directive*]

- 15.3.3 R If a *firm* provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the *Prospectus Directive*, that *firm* must inform the *retail client* where that prospectus is made available to the public.

[Note: article 31(3) of the *MiFID implementing Directive*]

- 15.3.4 R Where the risks associated with a *designated investment* composed of two or more different *designated investments* or services are likely to be greater than the risks associated with any of the components, a *firm* must provide an adequate description of the components of that *designated investment* and the way in which its interaction increases the risks.

[Note: article 31(4) of the *MiFID implementing Directive*]

- 15.3.5 R In the case of a *designated investment* that incorporates a guarantee by a third party, the information about the guarantee must include sufficient detail about the guarantor and the guarantee to enable the *retail client* to make a fair assessment of the guarantee.

[Note: article 31(5) of the *MiFID implementing Directive*]

- 15.3.6 [intentionally blank]

Providing information in a durable medium or via a website

- 15.3.7 R If a *rule* in this section requires a *firm* to provide information, that information must be provided in a *durable medium* or by means of a website (where that does not constitute a *durable medium*) that satisfies the *website conditions*.

[Note: article 29(4) of the *MiFID implementing Directive*]

- 15.3.8 R (1) *Information about designated investments* must be provided in good time before a *firm* carries on *designated investment business* or *MiFID business*.
- (2) A *firm* may provide that information immediately after it begins to carry on that business if:
- (a) the *firm* was unable to comply with (1) because the relevant business was concluded at the request of the *retail client* using a *means of distance communication* which prevented the *firm* from complying with that *rule*; or
 - (b) in any case where the *rule on voice telephony communications* does not otherwise apply, the *firm* complies with the requirements of that *rule* as if the client was a *consumer*.

[Note: article 29(2) and (5) of the *MiFID implementing Directive*]

Keeping the client up to date

- 15.3.9 R A *firm* must notify a *client* in good time about any material change to the information provided under the *rules* in this section which is relevant to a service that the *firm* is providing to that *client*. That notification must be given in a *durable medium* if the information to which it relates is given in a *durable medium*.

[Note: article 29(6) of the *MiFID implementing Directive*]

Information about UCITS schemes

- 15.3.10 R If a *firm* provides a *client* with a *simplified prospectus* or an *EEA simplified prospectus* which, in either case, meets the requirements of article 28 of the *UCITS Directive*, it will have provided appropriate information for the purposes of the *requirement to disclose information on designated investments and investment strategies*, the *requirement to disclose information on costs and associated charges* and the *detailed requirements on costs and associated charges* in respect of the costs and associated charges related to the *UCITS scheme* itself, including the exit and entry commissions.

[Note: article 34 of the *MiFID implementing Directive*]

- 15.3.11 [intentionally blank]

Chapter 16 [intentionally blank]

17 Reporting information to clients

17.1 General client reporting requirement

- 17.1.1 R A *firm* must ensure in relation to *MiFID business* or the *equivalent business of a third country investment firm* that a *client* receives adequate reports on the services provided to it by the *firm*. The reports must include, where applicable, the costs associated with the transactions and services undertaken by the *firm* on behalf of the *client*.

[Note: article 19(8) of *MiFID*]

17.2 Occasional reporting

Execution of orders other than when managing investments

- 17.2.1 R (1) If a *firm* has carried out an order in the course of its *designated investment business* on behalf of a *client*, it must:
- (a) promptly provide the *client*, in a *durable medium*, with the essential information concerning the execution of the order;

- (b) in the case of a *retail client*, send the *client* a notice in a *durable medium* confirming the execution of the order and such of the *trade confirmation information* as is applicable:
 - i) as soon as possible and no later than the first *business day* following that execution; or
 - ii) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party; and
 - (c) supply a *client*, on request, with information about the status of his order.
- (2) Paragraph 1 does not apply to a *firm managing investments*.
 - (3) Paragraph 1 (b) does not apply if the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *client* by another *person*.
 - (4) Paragraph 1 (a) and (b) do not apply to an order executed on behalf of a *client* that relates to a bond funding a mortgage loan agreement with the *client*. The report on the transaction must be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.
 - (5) If a *firm* carries out an order for a *retail client* relating to *units* or *shares* in a collective investment undertaking that is part of a series of orders that are executed periodically, it must:
 - (a) comply with paragraph 1(b) in relation to that order; or
 - (b) provide the *client* at least once every six months with such of the *trade confirmation information* as is applicable in relation to each transaction in that series carried out in the relevant reporting period.

[Note: article 40(1) to (4) of the *MiFID implementing Directive*]

17.2.2 [intentionally blank]

17.2.3 R For the purposes of calculating the unit price in the *trade confirmation information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

[Note: article 40(4) of the *MiFID implementing Directive*]

17.2.4 [intentionally blank]

17.2.5 [intentionally blank]

17.2.6 [intentionally blank]

Record keeping: occasional reporting

17.2.7 R A *firm* must retain a copy of any confirmation despatched to a *client* under this section:

(a) for *MiFID business* or *the equivalent business of third country investment firm* for a period of at least five years; or

(b) for business that is neither *MiFID business* nor *the equivalent business of a third country investment firm* for a period of at least three years,

from the date of despatch.

[Note: see article 51(3) of the *MiFID implementing Directive*]

17.3 Periodic reporting

17.3.1 R (1) If a *firm* is *managing investments* on behalf of a *client*, it must provide the *client* with a *periodic statement* in a *durable medium* unless such a statement is provided by another *person*.

(2) If the *client* is a *retail client*, the *periodic statement* must include such of the *periodic information* as is applicable.

[Note: article 41(1) and (2) of the *MiFID implementing Directive*]

17.3.2 R (1) In the case of a *retail client*, the *periodic statement* must be provided once every six months, except in the following cases:

(a) if the *retail client* so requests, the *periodic statement* must be provided every three months;

(b) if the *retail client* elects to receive information about executed transactions on a transaction-by-transaction basis (*COBS* 17.3.3R) and there are no transactions in *warrants* or *derivatives*, the *periodic statement* must be provided at least once every twelve months;

(c) if the agreement between a *firm* and a *retail client* for the *managing of investments* authorises a leveraged portfolio, the *periodic statement* must be provided at least once a month.

(2) A *firm* must inform a *retail client* that he has the right to request the provision of a *periodic statement* every three months.

[Note: article 41(3) of the *MiFID implementing Directive*]

- 17.3.3 R (1) If the *client* elects to receive information about executed transactions on a transaction-by-transaction basis, a *firm managing investments* must provide promptly to the *client*, on the execution of a transaction, the *trade confirmation information* concerning that transaction in a *durable medium*.
- (2) If the *client* is a *retail client*, the *firm* must send him a notice confirming the transaction and containing such *trade confirmation information* as is applicable:
- (a) no later than the first *business day* following that execution; or
 - (b) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party;

unless the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *retail client* by another *person*.

[Note: article 41(4) of the *MiFID implementing Directive*]

- 17.3.4 R For the purposes of calculating the unit price in the *trade confirmation information* or *periodic information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

[Note: article 41(4) of the *MiFID implementing Directive*]

- 17.3.5 R If a *firm managing investments* for a *retail client* carries out a transaction in, or operates a *client* account that includes, an uncovered open position in a contingent liability transaction, the *firm* must report to the *retail client* any losses exceeding any predetermined threshold, agreed between the *firm* and the *retail client*:

- (1) no later than the end of the *business day* in which the threshold is exceeded; or
- (2) where the threshold is exceeded on a non-*business day*, the close of the next *business day*.

[Note: article 42 of the *MiFID implementing Directive*]

- 17.3.6 R For the purposes of this section, a contingent liability transaction is one that involves any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument.

[Note: recital 63 of the *MiFID implementing Directive*]

17.3.7 [intentionally blank]

17.3.8 [intentionally blank]

17.3.9 [intentionally blank]

Record keeping: periodic reporting

17.3.10 R A *firm* must make, and retain, a copy of any *periodic statement*:

- (1) for *MiFID business* or *the equivalent business of a third country investment firm* for a period of at least five years; or
- (2) for business that is neither *MiFID business* nor *the equivalent business of a third country investment firm* for a period of at least three years;

from the date of despatch.

[Note: see article 51(3) of the *MiFID implementing Directive*]

17.4 Statements of client designated investments or client money

17.4.1 R (1) A *firm* that holds *client designated investments* or *client money* for a client must send that *client* at least once a year a statement in a *durable medium* of those *designated investments* or that *client money* unless such a statement has been provided in a *periodic statement*.

(2) A *credit institution* need not send a statement in respect of *deposits* held by it.

[Note: article 43(1) of the *MiFID implementing Directive*]

17.4.2 R A *firm* must include in a statement of *client* assets referred to under this section the following information:

- (1) details of all the *designated investments* or *client money* held by the *firm* for the *client* at the end of the period covered by the statement;
- (2) the extent to which any *client designated investments* or *client money* have been the subject of *securities financing transactions*; and
- (3) the extent of any benefit that has accrued to the *client* by virtue of participation in any *securities financing transactions*, and the basis on which that benefit has accrued.

[Note: article 43(2) of the *MiFID implementing Directive*]

17.4.3 R In cases where the portfolio of a *client* includes the proceeds of one or more unsettled transactions, the information in a statement provided under this

section may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

[Note: article 43(2) of the *MiFID implementing Directive*]

17.4.4 R A *firm* which holds *designated investments* or *client money* and is *managing investments* for a *client* may include the statement under this section in the *periodic statement* it provides to that *client*.

[Note: article 43(3) of the *MiFID implementing Directive*]

17.5 [intentionally blank]

17.6 [intentionally blank]

COBS 17 Annex 1 R

COBS 17 Annex 1 R (1)

	The information below must be provided, where relevant for the purposes of reporting to a retail client, in accordance with SUP 17 Annex 1	(1) <i>Trade confirmation information</i>	(2) <i>Periodic information</i> (where trade confirmation information is not provided on a transaction by transaction basis.)
	General		
1.	the reporting <i>firm</i> identification;	Y	
2.	the name or other designation of the <i>client</i> ;	Y	
3.	the trading day;	Y	Y
4.	the trading time;	Y	Y
5.	the type of the order (for example, a limit order or a market order);	Y	Y
6.	the venue identification;	Y	Y
7.	the instrument identification;	Y	Y
8.	the buy/sell indicator;	Y	Y

9.	the nature of the order if other than buy/sell;	Y	Y
10.	the quantity;	Y	Y
11.	the unit price;	Y	Y
12.	the total consideration;	Y	Y
13.	a total sum of the commissions and expenses charged and, where the <i>retail client</i> so requests, an itemised breakdown;	Y	Y
14.	the amount of any <i>mark-up</i> or <i>mark-down</i> imposed by the <i>firm</i> or its <i>associate</i> where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in <i>executing</i> the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i> ;	Y	
15.	the rate of exchange obtained where the transaction involves a conversion of currency;	Y	
16.	the fact that the transaction involves any dividend or capitalisation or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the <i>investment</i> , and under the terms of the transaction the benefit of which will not pass to the purchaser;	Y	
17.	the <i>client's</i> responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the <i>client</i> ; and	Y	
18.	if the <i>client's</i> counterparty was the <i>firm</i> itself or any person in the <i>firm's group</i> or another <i>client</i> of the <i>firm</i> , the fact that this was the case unless the order was <i>executed</i> through a trading system that facilitates anonymous trading.	Y	
	For transactions in a <i>derivative</i> :		
19.	the maturity, delivery or expiry date of the <i>derivative</i> ;	Y	Y
20.	in the case of an <i>option</i> , a reference to the last exercise date, whether it can be exercised before maturity and the strike price;	Y	Y

21.	if the transaction <i>closes out</i> an open <i>futures</i> position, all essential details required in respect of each contract comprised in the open position and each contract by which it was <i>closed out</i> and the profit or loss to the <i>client</i> arising out of <i>closing out</i> that position (a difference account).	Y	Y
For transactions in an <i>option</i> :			
22.	the date of exercise, and either the time of exercise or that the <i>client</i> will be notified of that time on request;	Y	Y
23.	whether the exercise creates a sale or purchase in the underlying asset; and	Y	Y
24.	the strike price of the <i>option</i> (for a currency <i>option</i> , the rate of exchange will be the same as the strike price) and, if applicable, the total consideration from or to the <i>client</i> .	Y	Y
[Note: article 40(4) and recital 64 to <i>MiFID implementing Directive</i>]			
A <i>firm</i> may provide the <i>client</i> with the information referred to in this Annex using standard codes if it also provides an explanation of the codes used.			
[Note: article 40(5) of <i>MiFID implementing Directive</i>]			

COBS 17 Annex 1 R (2) - Information to be included in a Periodic Statement

	<i>Periodic information (all cases)</i>	
1.	the name of the <i>firm</i> ;	
2.	the name or other designation of the <i>retail client's</i> account;	
3.	a statement of the contents and the valuation of the portfolio, including details of:	
	(a)	each <i>designated investment</i> held, its market value or fair value if market value is unavailable;
	(b)	the cash balance at the beginning and at the end of the reporting period; and
	(c)	the performance of the portfolio during the reporting period;
4.	the total amount of <i>fees</i> and charges incurred during the reporting period, itemising at least total management <i>fees</i> and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on	

	request;
5.	a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the <i>firm</i> and the <i>client</i> ;
6.	the total amount of dividends, interest and other payments received during the reporting period in relation to the <i>client's</i> portfolio;
7.	information about other corporate actions giving rights in relation to <i>designated investments</i> held in the portfolio; and
8.	<p>details of any assets loaned or charged including:</p> <p>(a) which <i>investments</i> (if any) were at the end of the relevant period loaned to any third party and which <i>investments</i> (if any) were at that date charged to secure borrowings made on behalf of the portfolio; and</p> <p>(b) the aggregate of any interest payments made and income received during the period in respect of loans or borrowings made during that period.</p>
[Note: article 41 (2) of <i>MiFID implementing Directive</i>]	

Chapter 18 [intentionally blank]

Chapter 19 [intentionally blank]

Chapter 20 [intentionally blank]

Chapter 21 [intentionally blank]

Appendix 1: Application

Part 1

Who? - modifications to the general rule of application in relation to types of firm

1. [intentionally blank]

Part 2

What? - modifications to the general rule of application in relation to types of activity

1 Eligible counterparty business

1.2 R The *COBS* provisions in the Table do not apply to *eligible counterparty business* that is *MiFID business* or the *equivalent business of a third country investment firm*.

Table

COBS provision	Description
<i>COBS 2</i>	Conduct of business obligations
<i>COBS 4</i> (other than <i>COBS 4.2.5R</i> and <i>COBS 4.2.6G</i>)	Communicating with clients
<i>COBS 5</i>	Financial promotion
<i>COBS 7.1</i>	Information about the firm, its services and remuneration
<i>COBS 9</i>	Client agreements
<i>COBS 11</i>	Non-advised services
<i>COBS 12.2</i> , <i>COBS 12.3</i> and <i>COBS 12.6</i>	Best execution, client order handling and use of dealing commission
<i>COBS 13.3.1R</i> to <i>COBS 13.3.3R</i>	Labelling of non-independent research
<i>COBS 15.3</i>	Information about designated investments
<i>COBS 17</i>	Reporting information to clients

[Note: article 24(1) of *MiFID*]

2 Transactions between an MTF operator and its users

- 2.1 R The *COBS* provisions in the Table to 1.2R and *COBS* 12.4 (client limit orders) do not apply to a transaction between an operator of an *MTF* and a member or participant in relation to the use of the *MTF*.

[Note: article 14(3) of *MiFID*]

3 Transactions between MTF users

- 3.1 R The *COBS* provisions in the Table to 1.2R and *COBS* 12.4 (client limit orders) do not apply to a *MTF transaction* that is *MiFID business* or the *equivalent business of a third country investment firm*. However, a *firm* must comply with those provisions in respect of its *clients* if, acting on its *clients* behalf, it is executing their orders on a *MTF*.

[Note: article 14(3) of *MiFID*]

4 Transactions between regulated market participants

- 4.1 R The *COBS* provisions in the Table to *COBS* 1.2R and *COBS* 12.4 (client limit orders) do not apply to a *regulated market transaction* that is *MiFID business* or the *equivalent business of a third country investment firm*. However, a *firm* must comply with those provisions in respect of its *clients* if, acting on its *clients* behalf, it is executing their orders on a *regulated market*.

[Note: article 42(4) of *MiFID*]

5 Consumer credit products

- 5.1 R If a *firm*, in relation to its *MiFID business*, offers an *investment service* as part of a financial product that is subject to other provisions of European Community legislation or common European standards related to *credit institutions* and consumer credits with respect to risk assessments of clients and/or information requirements, that service is not subject to the *rules* in this sourcebook that implement Article 19 of *MiFID*.

[Note: article 19(9) of *MiFID*]

Part 3

Where? - modifications to the general rule of application in relation to location

1 EEA territorial scope rule: compatibility with European law

- 1.1 R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for *guidance* on this).
- (2) This *rule* overrides any other *rule* in this sourcebook.

- 1.2 R In addition to the *EEA territorial scope rule*, the effect of the *Electronic Commerce Directive* on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 7.3 of Part 4 for *guidance* on this).

[Note: article 3(3) of, and Annex to, the *Electronic Commerce Directive*]

2 Business with UK clients from overseas establishments

- 2.1 R (1) This sourcebook applies to a *firm* which carries on business with a *client* in the *United Kingdom* from an establishment overseas.
- (2) But the sourcebook does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:
- (a) would fall within the overseas *persons* exclusions in article 72 of the *Regulated Activities Order*; or
 - (b) would not be regarded as carried on in the *United Kingdom*.

- 2.2 G One of the effects of the *EEA territorial scope rule* is to override the application of this sourcebook to the overseas establishments of *EEA firms* in a number of cases, including circumstances covered by *MiFID*, the *Distance Marketing Directive* or the *Electronic Commerce Directive*. See Part 4 for *guidance* on this.

Part 3A [intentionally blank]

Part 4

Guidance

- 1 The main extensions and restrictions to the general application rule
- 1.1 G The *general application rule* is modified in Parts 1 to 3A of Appendix 1 and in certain chapters of the *Handbook*. The modification may be an extension of this *rule*. For example, *COBS 4* (Communications to clients) and *COBS 5* (Financial promotion) have extended the application of the rule.
- 1.2 G The provisions of the *Single Market Directives* and other directives also extensively modify the *general application rule*, particularly in relation to territorial scope. However, for the majority of circumstances, the *general application rule* is likely to apply.
- 2 The Single Market Directives and other directives
- 2.1 G This *guidance* provides a general overview only and is not comprehensive.
- 2.2 G When considering the impact of a directive on the territorial application of a

rule, a *firm* will first need to consider whether the relevant situation involves a non-UK element. The *EEA territorial scope rule* is unlikely to apply if a *UK firm* is doing business in a *UK establishment* for a *client* located in the *United Kingdom* in relation to a *United Kingdom* product. However, if there is a non-UK element, the *firm* should consider whether it is subject to the directive, whether the business it is performing is subject to the directive and whether the particular *rule* is within the scope of the directive. If the answer to all three questions is ‘yes’, the *EEA territorial scope rule* may change the effect of the *general application rule*.

- 2.3 G When considering a particular situation, a *firm* should also consider whether two or more directives apply.

COBS Transitional Provisions

COBS TP Chapter 3 Client categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
			Overview of transitional provisions for client categorisation		
3.1	<i>COBS</i> 3	G	<p>(1) <i>COBS</i> TP 3.2 contains default transitional categorisation provisions in relation to the existing <i>clients</i> of a <i>firm</i> on 1 November 2007. In many cases, they allow a <i>client</i> to be automatically provided with the nearest equivalent categorisation under <i>COBS</i> 3 to their previous categorisation.</p> <p>(2) <i>COBS</i> TP 3.3 explains how the transitional provisions for <i>client</i> categorisation relate to the requirement for a <i>firm</i> to act if it becomes aware that an <i>elective professional client</i> no longer satisfies the initial conditions for its categorisation.</p>	From 1 November 2007 indefinitely	1 November 2007

			<p>(3) The default provisions do not prevent a <i>firm</i> categorising such a <i>client</i> differently in accordance with <i>COBS 3</i>. <i>COBS TP 3.4</i> provides guidance on how some of the procedural requirements in <i>COBS 3</i> apply in some such cases.</p> <p>(4) <i>COBS TP 3.5</i> contains transitional notification obligations, which apply if the default provisions do not allow that <i>client</i> to be provided with the nearest equivalent categorisation or a <i>firm</i> chooses not to take advantage of those provisions in relation to a <i>client</i>.</p> <p>(5) <i>COBS TP 3.6</i> contains a transitional notification obligation that applies to a <i>firm</i> that, in relation to <i>MiFID business</i> and the <i>equivalent business of a third country investment firm</i>, takes advantage of the default transitional categorisation provisions to classify a <i>client</i> as a <i>per se</i> professional <i>client</i>.</p>		
			Categorisation of existing clients		
3.2	<i>COBS 3</i>	R	<p>(1) An existing <i>client</i> that was correctly categorised as a <i>private customer</i> immediately before 1 November 2007 is a <i>retail client</i> unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>(2) An existing <i>client</i> that was correctly categorised as an <i>intermediate customer</i> immediately before 1 November 2007:</p>	From 1 November 2007 indefinitely	1 November 2007

			<p>(a) is an <i>elective professional client</i> if it was an expert <i>private customer</i> that had been re-classified as an <i>intermediate customer</i> on the basis of its experience and understanding; or</p> <p>(b) is otherwise a <i>per se professional client</i>,</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>(4) An existing <i>client</i> that was correctly categorised as a <i>market counterparty</i> immediately before 1 November 2007 is:</p> <p>(a) in relation to <i>MiFID business</i> or the <i>equivalent business of a third country investment firm</i>, a <i>per se professional client</i>; and</p> <p>(b) otherwise, an <i>eligible counterparty</i>,</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>[Note: article 71(6) of, and third paragraph of section II.2 of Annex II to <i>MiFID</i>]</p>		
3.3	<i>COBS 3</i>	G	<p>Under <i>COBS 3.5.9</i>, if a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i>, the <i>investment firm</i> must take the appropriate action. In the case of a <i>client</i> that has been classified as an <i>elective professional client</i> under <i>COBS TP 3.2R(2)(a)</i>, the initial conditions are those that applied to the <i>client's</i></p>		

			initial categorisation as an <i>intermediate customer</i> .		
			Former inter-professional business		
3.4	COBS 3	G	The requirement to provide notices under COBS 3.3.1 only applies in relation to new <i>clients</i> . The requirement to obtain confirmation under COBS 3.6.3R(2) only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under COBS 3.	From 1 November 2007 indefinitely	1 November 2007
			Transitional notification obligations		
3.5	COBS 3	R	<p>(1) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>private customer</i> immediately before 1 November 2007 as a <i>retail client</i>, it must notify that <i>client</i> of its categorisation as a <i>professional client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(2) If a <i>firm</i> does not categorise a <i>client</i> that was an <i>intermediate customer</i> immediately before 1 November 2007 as a <i>professional client</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(3) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>market</i></p>	From 1 November 2007 indefinitely	1 November 2007

			<p><i>counterparty</i> immediately before 1 November 2007 as an <i>eligible counterparty</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>professional client</i> on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>[Note: article 28(1) of the <i>MiFID implementing Directive</i>]</p>		
3.6	COBS 3	R	<p>If a <i>firm</i>, in relation to <i>MiFID business</i> or the <i>equivalent business of a third country investment firm</i>, categorises a <i>client</i> who would not otherwise have been a <i>professional client</i> as a <i>professional client</i> under <i>COBS TP 3.2(2)(b)</i> or <i>(3)(a)</i>, it must inform that <i>client</i> about the relevant conditions for the categorisation of <i>clients</i>. This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>[Note: article 71(6) of <i>MiFID</i>]</p>	From 1 November 2007 indefinitely	1 November 2007
3.7		G	<p>A notice to a <i>professional client</i> under <i>COBS TP 3.5</i> should inform that <i>client</i>:</p> <p>(a) that they have been categorised as a <i>professional client</i>; and</p> <p>(b) of the main differences between the treatment of a <i>retail client</i> and a <i>professional client</i>.</p>		
3.8		R	<p>The record keeping requirements under <i>COBS 3.8.2R</i> apply in relation to any <i>client</i> categorisations or re-categorisations made under the transitional provisions for <i>COBS 3</i>.</p>		

COBS TP Chapter 11 Appropriateness Assessments

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
1	COBS 11 (Appropriateness assessments)	R	<p>A <i>client</i> who has engaged in a course of dealings involving a specific type of product or service beginning before 1 November 2007 is presumed to have the necessary experience and knowledge in order to understand the risks involved in relation to that specific type of product or service.</p> <p>[Note: recital 59 of the <i>MiFID implementing Directive</i>]</p>	From 1 November 2007 indefinitely	1 November 2007
2	11.1.2R	R	<p>(1) COBS 11.1.2R applies only in relation to <i>MiFID business</i> or <i>equivalent business of a third country investment firm</i>.</p> <p>(2) In relation to business which is neither <i>MiFID business</i> nor <i>equivalent business of a third country investment firm</i>, COB 3.9.5R(2) applies, as it was in force on 31 October 2007.</p>	From 1 November 2007 to 31 May 2008	1 November 2007
3	[intentionally blank]				

COBS TP Chapter 14 [intentionally blank]

COBS TP Chapter 15 [intentionally blank]

COBS TP Chapter 16 [intentionally blank]

COBS TP Chapter 17 [intentionally blank]

COBS TP Chapter 20 [intentionally blank]

COBS Schedules 1-6 [intentionally blank]