CONDUCT OF BUSINESS SOURCEBOOK 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) (a) section 138 (General rule-making power)
    (b) section 139(4) (Miscellaneous ancillary matters);
    (c) section 145 (Financial promotions rules);
    (d) section 149 (Evidential provisions);
    (e) section 156 (General supplementary powers);
    (f) section 157(1) (Guidance);
    (g) section 213 (The compensation scheme);
    (h) section 214 (General);
    (i) section 226 (Compulsory jurisdiction); and

(2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions 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) 24 May 2007, in respect of paragraph D; and
(2) 1 November 2007, for all other purposes.

Revocation of the Conduct of Business Sourcebook (MiFID Transposition) Instrument 2007

D. The Conduct of Business Sourcebook (MiFID Transposition) Instrument 2007 (FSA 2007/3) is revoked in its entirety.

Revocation of the Conduct of Business sourcebook (COB)

E. The provisions of the Conduct of Business sourcebook (COB) are revoked.

Making the New Conduct of Business sourcebook (COBS)

F. The Financial Services Authority makes the rules and gives the guidance in the Annex to this instrument.

Revocation of the Electronic Commerce Directive sourcebook (ECO)

G. The provisions of the Electronic Commerce Directive sourcebook (ECO) are revoked.
Notes

H. In the Annex to this instrument, the "notes" (indicated by "Note:") are included for the convenience of readers but do not form part of the legislative text.

Citation

I. This instrument may be cited as the Conduct of Business Sourcebook Instrument 2007.

J. The sourcebook in the Annex to this instrument (including its schedules) may be cited as the Conduct of Business sourcebook (or COBS).

By order of the Board
24 May 2007
## Annex

**The Conduct of Business sourcebook (COBS)**

This Annex makes the new Conduct of Business sourcebook (COBS). All the text is new and is therefore not shown underlined. This Annex contains the following sections of COBS:

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<th>Chapter Title</th>
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<td>2</td>
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<td>3</td>
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<td>4</td>
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<td>5</td>
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<td>Sections 7.1 to 7.2</td>
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<td>8</td>
<td>Client agreements</td>
<td>Section 8.1</td>
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<tr>
<td>9</td>
<td>Suitability (including basic advice)</td>
<td>Sections 9.1 to 9.3, and 9.5 to 9.6 (Section 9.4 to follow)</td>
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<td>10</td>
<td>Appropriateness (for non-advised services)</td>
<td>Sections 10.1 to 10.7</td>
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<td>11</td>
<td>Dealing and managing</td>
<td>Sections 11.1 to 11.5, and 11.7 (Section 11.6 to follow)</td>
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<td>12</td>
<td>Investment research</td>
<td>Sections 12.1 to 12.4</td>
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<td>13</td>
<td>Preparing product information</td>
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<td>14</td>
<td>Providing product information</td>
<td>Sections 14.1 and 14.3 (Section 14.2 to follow)</td>
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<td>15</td>
<td>Cancellation</td>
<td>Sections 15.1 to 15.5</td>
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<td>16</td>
<td>Reporting information to clients</td>
<td>Sections 16.1 to 16.6</td>
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<td>Claims handling for long-term care insurance</td>
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<td>Pensions – supplementary provisions</td>
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<td>20</td>
<td>With-profits</td>
<td>Sections 20.1 to 20.4</td>
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### Transitional Provisions and Schedules
1 Application

1.1 The general application rule

1.1.1 R This sourcebook applies to a firm with respect to the following activities carried on from an establishment maintained by it, or its appointed representative, in the United Kingdom:

(1) accepting deposits;

(2) designated investment business;

(3) long-term insurance business in relation to life policies;

and activities connected with them.

Modifications to the general application rule

1.1.2 R The general application rule is modified in COBS 1 Ann 1 according to the activities of a firm (Part 1), its location (Part 2) and certain temporary provisions (Part 2A).

1.1.3 R The general rule is also modified in the chapters to this sourcebook for particular purposes, including those relating to the type of firm, its activities or location, and for purposes relating to connected activities.

Guidance

1.1.4 G Guidance on the application provisions is in COBS 1 Ann 1 (Part 3).
1 Annex 1: Application (see COBS 1.1.2R)

Part 1: What?
Modifications to the general application rule according to activities

<table>
<thead>
<tr>
<th>1.</th>
<th>Eligible counterparty business</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>R</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COBS provision</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>COBS 2 (other than COBS 2.4)</td>
<td>Conduct of business obligations</td>
</tr>
<tr>
<td>COBS 4 (other than COBS 4.2.5R and COBS 4.2.6G)</td>
<td>Communicating with clients including financial promotions</td>
</tr>
<tr>
<td>COBS 6.1</td>
<td>Information about the firm, its services and remuneration</td>
</tr>
<tr>
<td>COBS 8</td>
<td>Client agreements</td>
</tr>
<tr>
<td>COBS 10</td>
<td>Appropriateness (for non-advised services)</td>
</tr>
<tr>
<td>COBS 11.2, COBS 11.3 and COBS 11.6</td>
<td>Best execution, client order handling and use of dealing commission</td>
</tr>
<tr>
<td>COBS 12.3.1R to 12.3.3R</td>
<td>Labelling of non-independent research</td>
</tr>
<tr>
<td>COBS 14.3</td>
<td>Information about designated investments</td>
</tr>
<tr>
<td>COBS 16</td>
<td>Reporting information to clients</td>
</tr>
</tbody>
</table>

[Note: article 24(1) of MiFID]

2. Transactions between an MTF operator and its users

| 2.1 | R | The COBS provisions in paragraph 1.1R and COBS 11.4 (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 concluded on an MTF

| 3.1 | R | The COBS provisions in paragraph 1.1R and COBS 11.4 (client limit orders) do not apply to transactions concluded under the rules governing an MTF between members or participants of the MTF (where the transactions are MiFID or equivalent third country business). However, the member or |
participant must comply with those provisions in respect of its clients if, acting on its clients behalf, it is executing their orders on an MTF.

[Note: article 14(3) of MiFID]

4. Transactions concluded on a regulated market

4.1 R In relation to transactions concluded on a regulated market (where the transactions are MiFID or equivalent third country business), members and participants of the regulated market are not required to apply to each other the COBS provisions in paragraph 1.1R and COBS 11.4 (client limit orders). However, the member or participant 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]

5.2 G This exclusion for consumer credit products is intended to apply on a narrow basis in relation to cases in which the investment service is a part of another financial product. It does not apply where the investment service is the essential or leading part of the financial product. It also does not apply where the service provided is a combination of an investment service and an ancillary service (for example, granting a credit for the execution of an order where the credit is instrumental to the buying or the selling of a financial instrument.) The exclusion also does not apply in relation to the sale of a financial instrument for the purpose of enabling a client to invest money to repay his obligations under a loan, mortgage or home reversion.

Part 2: Where?
Modifications to the general application rule according 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 3 for guidance on this).

(2) This rule overrides every 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 3 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 3 for guidance on this.

### Part 2A: temporary provisions to be removed on making the Policy Statement for the conduct of business regime: non-MiFID deferred matters

#### 1. Matters not covered by the temporary provisions

#### 1.1 R

None of the other *rules* in this Part of the Annex affects the operation of:

(1) *COBS 4* (Communicating with clients including financial promotions) and *COBS 11.7* (Personal transactions);

(2) any provision in this sourcebook to the extent that provision implements a European Directive; and

(3) any provision in this sourcebook to the extent that it extends the application of *rules* that implement *MiFID* to the *equivalent business of a third country investment firm*.

#### 1.2 G

For example, this Part would not affect the application of the provisions in this sourcebook that implement *MiFID* in relation to *MiFID or equivalent third country business*. This is the case even if such business falls within
of the categories listed below.

Temporary provisions for certain types of business (other than MiFID and equivalent third country business)

1.3 R Subject to paragraph 1.1R, this sourcebook does not apply to:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
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<tbody>
<tr>
<td>(1)</td>
<td>corporate finance business;</td>
</tr>
<tr>
<td>(2)</td>
<td>activities referred to in the general application rule related to:</td>
</tr>
<tr>
<td>(a)</td>
<td>commodity futures; or</td>
</tr>
<tr>
<td>(b)</td>
<td>commodity options; or</td>
</tr>
<tr>
<td>(c)</td>
<td>contracts for differences related to an underlying commodity; or</td>
</tr>
<tr>
<td>(d)</td>
<td>other futures or contracts for differences which are not related to commodities, financial instruments or cash;</td>
</tr>
<tr>
<td></td>
<td>which are not energy market activities or oil market activities;</td>
</tr>
<tr>
<td>(3)</td>
<td>oil market activities or energy market activities;</td>
</tr>
<tr>
<td>(4)</td>
<td>business relating to contracts for differences that are not of a type covered by section C(10) of Annex I to MiFID save that this does not affect the operation of COBS 10 in relation to the matters covered in COBS 10.1.2R;</td>
</tr>
<tr>
<td>(5)</td>
<td>business to which chapter 11 (Trustee and depositary activities) or 12 (Lloyd's) of COB as it applied on 31 October 2006;</td>
</tr>
<tr>
<td>(6)</td>
<td>the business of collective investment undertakings and the scheme management activities of the depositary or manager of a collective investment undertaking. This does not affect requirements relating to the distribution or marketing of units or shares in such undertakings;</td>
</tr>
<tr>
<td>(7)</td>
<td>the business of an OPS firm;</td>
</tr>
<tr>
<td>(8)</td>
<td>the business of an authorised professional firm;</td>
</tr>
<tr>
<td>(9)</td>
<td>the business of a service company or any other business falling within Article 25(2) of the Regulated Activities Order conducted for a professional client or an eligible counterparty;</td>
</tr>
<tr>
<td>(10)</td>
<td>ICVCs; and</td>
</tr>
<tr>
<td>(11)</td>
<td>UCITS qualifiers and service companies.</td>
</tr>
</tbody>
</table>
### Part 3: Guidance

<table>
<thead>
<tr>
<th>1.</th>
<th>The main extensions and restrictions to the general application rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>G The <em>general application rule</em> is modified in Parts 1 to 2A of Annex 1 and in certain chapters of the <em>Handbook</em>. The modification may be an extension of this <em>rule</em>. For example, <em>COBS 4</em> (Communications to clients) and <em>COBS 5</em> (Financial promotion) have extended the application of the rule.</td>
</tr>
<tr>
<td>1.2</td>
<td>G The provisions of the <em>Single Market Directives</em> and other directives also extensively modify the <em>general application rule</em>, particularly in relation to territorial scope. However, for the majority of circumstances, the <em>general application rule</em> is likely to apply.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.</th>
<th>The Single Market Directives and other directives</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>G This <em>guidance</em> provides a general overview only and is not comprehensive.</td>
</tr>
<tr>
<td>2.2</td>
<td>G When considering the impact of a directive on the territorial application of a <em>rule</em>, a <em>firm</em> will first need to consider whether the relevant situation involves a non-<em>UK</em> element. The <em>EEA territorial scope rule</em> is unlikely to apply if a <em>UK</em> firm is doing business in a <em>UK establishment</em> for a <em>client</em> located in the United Kingdom in relation to a United Kingdom product. However, if there is a non-<em>UK</em> element, the <em>firm</em> should consider whether it is subject to the directive, whether the business it is performing is subject to the directive and whether the particular <em>rule</em> is within the scope of the directive. If the answer to all three questions is ‘yes’, the <em>EEA territorial scope rule</em> may change the effect of the <em>general application rule</em>.</td>
</tr>
<tr>
<td>2.3</td>
<td>G When considering a particular situation, a <em>firm</em> should also consider whether two or more directives apply.</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>3.</th>
<th>MiFID: effect on territorial scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>G <em>PERG 13</em> contains general <em>guidance</em> on the <em>persons</em> and businesses to which <em>MiFID</em> applies.</td>
</tr>
<tr>
<td>3.2</td>
<td>G This <em>guidance</em> concerns the <em>rules</em> within the scope of <em>MiFID</em> including those <em>rules</em> which are in the same subject area as the implementing <em>rules</em>. A <em>rule</em> is within the scope of <em>MiFID</em> if it is followed by a ‘Note:’ indicating the article of <em>MiFID</em> or the <em>MiFID implementing Directive</em> which it implements.</td>
</tr>
<tr>
<td>3.3</td>
<td>G For a <em>UK MiFID investment firm</em>, <em>rules</em> in this sourcebook that are within the scope of <em>MiFID</em> generally apply to its <em>MiFID business</em> carried on from an establishment in the United Kingdom. They also generally apply to its <em>MiFID business</em> carried on from an establishment in another <em>EEA State</em>, 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 <em>MiFID</em>)</td>
</tr>
<tr>
<td>3.4</td>
<td>G For an <em>EEA MiFID investment firm</em>, <em>rules</em> in this sourcebook that are within the scope of <em>MiFID</em> generally apply only to its <em>MiFID business</em> if that</td>
</tr>
</tbody>
</table>
business is carried on from an establishment in, and within the territory of, the United Kingdom. (See article 32(1) and (7) of MiFID)

| 3.5 G | However, the rules on investment research and non-independent research (COBS 12.2 and 12.3) and the rules on personal transactions (COBS 11.7) 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. |

4. **Insurance Mediation Directive: effect on territorial scope**

| 4.1 G | The Insurance Mediation Directive's scope covers most firms carrying on most types of insurance mediation. The rules in this sourcebook within the Directive's scope are those relating to life policies that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis. The rules implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in COBS 7 (Insurance mediation) and COBS 9 (Suitability (including basic advice)). |

| 4.2 G | In the FSA's view, the responsibility for these minimum requirements rests with the Home State, but a Host State is entitled to impose additional requirements in the 'general good'. Accordingly, the general rules on territorial scope are modified so that:

1. for a UK firm providing passported activities in another EEA State under the Directive, whether through a branch or cross-border services, the rules implementing the Directive's minimum requirements apply but the additional rules within the Directive's scope do not;

2. for an EEA firm providing passported activities under the Directive in the United Kingdom, the rules implementing the Directive's minimum requirements do not apply, but the additional rules within the Directive's scope do apply unless the Home State imposes measures of like effect. (See recital 19 and article 12(5) of the Insurance Mediation Directive) |

5. **Consolidated Life Directive: effect on territorial scope**

| 5.1 G | The Consolidated Life Directive's scope covers long-term insurers authorised under that Directive conducting long-term insurance business. The rules in this sourcebook within the Directive's scope are the cancellation rules and those rules requiring the provision of pre-contract information or information during the term of the contract concerning the insurer or the insurance contract. The Directive specifies minimum information and cancellation requirements and permits EEA States to adopt additional information requirements that are necessary for a proper understanding by the policyholder of the essential elements of the commitment. |
| 5.2 | G | If the *State of the commitment* is an *EEA State*, the Directive provides that the applicable information rules and cancellation rules shall be determined by that state. Accordingly, if the *State of the commitment* is the *United Kingdom*, the relevant rules in this sourcebook apply. Those rules do not apply if the *State of the commitment* is another *EEA State*. The territorial scope of other rules, in particular the *financial promotion rules*, is not affected since the Directive explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the *Consolidated Life Directive*) |
| 6. | **Distance Marketing Directive: effect on territorial scope** |
| 6.1 | G | In broad terms, a *firm* is within the *Distance Marketing Directive*’s scope when conducting an activity relating to a *distance contract* with a *consumer*. The *rules* in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information, the *cancellation rules* and the other specific *rules* implementing the Directive contained in *COBS 5* (Distance communications). |
| 6.2 | G | In the *FSA’s* view, the Directive places responsibility for requirements within the Directive's scope on the *Home State* except in relation to business conducted through a branch, in which case the responsibility rests with the *EEA State* in which the branch is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the *Distance Marketing Directive*) |
| 6.3 | G | This means that relevant *rules* in this sourcebook will, in general, apply to a *firm* conducting business within the Directive's scope from an establishment in the *United Kingdom* (whether the *firm* is a national of the *UK* or of any other *EEA* or non-*EEA* state). |
| 6.4 | G | Conversely, the relevant *rules* in this sourcebook will not apply to a *firm* conducting business within the Directive's scope from an establishment in another *EEA state* if the *firm* is a national of the *United Kingdom* or of any other *EEA state*. |
| 6.5 | G | In the *FSA’s* view: |
| | (1) | the 'country of origin' basis of the Directive is in line with that of the *Electronic Commerce Directive*; (See recital 6 of the *Distance Marketing Directive*) |
| | (2) | for business within the scope of both the *Distance Marketing Directive* and the *Consolidated Life Directive*, the territorial application of the *Distance Marketing Directive* takes precedence; in other words, the *rules* requiring pre-contract information and *cancellation rules* derived from the *Consolidated Life Directive* apply on a 'country of origin' basis rather than being based on the *state of the commitment*; (See articles 4(1) and 16 of the *DMD* noting that the *DMD* was adopted after the *Consolidated Life Directive*) |
for business within the scope of both the *Distance Marketing Directive* and the *Insurance Mediation Directive*, the minimum information and other requirements in the *Insurance Mediation Directive* continue to be those applied by the 'Home State', but the minimum requirements in the *Distance Marketing Directive* and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the *IMD* was adopted after the *DMD* and is not expressed to be subject to it)

<table>
<thead>
<tr>
<th>7.</th>
<th><strong>Electronic Commerce Directive: effect on territorial scope</strong></th>
</tr>
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<tbody>
<tr>
<td>7.1</td>
<td>G The <em>Electronic Commerce Directive</em>’s scope covers every firm carrying on an electronic commerce activity. Every rule in this sourcebook is within the Directive's scope.</td>
</tr>
<tr>
<td>7.2</td>
<td>G A key element of the Directive is the ability of a person from one EEA state to carry on an electronic commerce activity freely into another EEA state. Accordingly, the territorial application of the rules in this sourcebook is modified so that they apply to a firm carrying on an electronic commerce activity from an establishment in the United Kingdom with or for a person in the United Kingdom or another EEA state. Conversely, a firm carrying on an electronic commerce activity from an establishment in another EEA State with or for a person in the United Kingdom need not comply with the rules in this sourcebook. (See article 3(1) and (2) of the <em>Electronic Commerce Directive</em>)</td>
</tr>
<tr>
<td>7.3</td>
<td>G The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only ‘derogation’ in the Directive that the FSA has adopted for this sourcebook. The derogation applies to an insurer that is authorised under and carrying on an electronic commerce activity within the scope of the <em>Consolidated Life Directive</em> and permits EEA States to continue to apply their advertising rules in the 'general good'. Where the derogation applies, the financial promotion rules continue to apply for incoming electronic commerce activities (unless the firm's 'country of origin' applies rules of like effect) but do not apply for outgoing electronic commerce activities. (See article 3(3) and Annex, fourth indent of the <em>Electronic Commerce Directive</em>; Annex to European Commission Discussion Paper MARKT/2541/03)</td>
</tr>
</tbody>
</table>
| 7.4 | G In the FSA’s view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):
| (1) | is in line with the *Distance Marketing Directive*; and |
| (2) | overrides that of any other Directive discussed in this section to the extent that it is incompatible. |
| 7.5 | G The 'derogations' in the Directive may enable other EEA States to adopt a different approach to the United Kingdom in certain fields. (See recital 19 of the *IMD*, recital 6 of the *DMD*, article 3 and Annex of the *Electronic Commerce Directive*) |
## Commerce Directive

### Investor Compensation Directive

#### 8. Investor Compensation Directive

| 8. | G | (1) | The *Investor Compensation Directive* generally requires *MiFID investment firms* to belong to a compensation scheme established in accordance with the Directive. The *rules* in this sourcebook that implement the Directive are those (i) requiring *MiFID investment firms*, including their branches, to make available specified information about the compensation scheme to which they belong and specifying the language in which such information must be provided (*COBS 6.1.14R*) and (ii) restricting mention of the compensation scheme in advertising to factual references (*COBS 4.2.5R*). |

| 8. | G | (2) | In the FSA's view, these matters are a *Home State* responsibility although a *Host State* may continue to apply its own rules in the 'general good'. Accordingly, these *rules* apply to the establishments of a *UK MiFID investment firm* in the *United Kingdom* and another *EEA State* but also apply in accordance with the general application rule to an *EEA MiFID investment firm* providing services in the *UK* whether through a *branch* or *cross-border services* unless its *Home State* applies rules of like effect. |

#### 9. UCITS Directive: effect on territorial scope

| 9. | G | The *UCITS Directive* covers undertakings for collective investment in transferable securities (UCITS) meeting the requirements of the Directive, and their management companies and depositaries. The *rules* in this sourcebook within the Directive's scope are those in *COBS 14* (Providing product information to clients) relating to the distribution of a *simplified prospectus* by the management company. Those *rules* are the responsibility of the *Home State* of the UCITS. The Directive explicitly permits other *EEA States* in which a UCITS is marketed to continue to apply rules, including marketing and advertising rules, outside the field governed by the Directive. The Directive also applies certain rules derived from *MiFID* to management companies in relation to certain business activities. (See articles 1(6) and 44 of the *UCITS Directive*) |

### 9.2 Accordingly, the territorial scope of this sourcebook is modified so that:

| 9.2 | G | (1) | the *rules* relating to the distribution of a *simplified prospectus* apply to the management company (*operator*) of a UCITS whose *Home State* is the *United Kingdom* when marketing in other *EEA States*; |

| 9.2 | G | (2) | those *rules* do not apply to a management company of a UCITS whose *Home State* is another *EEA State* when marketing in the *United Kingdom*; other *rules*, such as the financial promotion rules and the information gathering and suitability rules (see *COBS 9 Suitability (including basic advice)*) continue to apply. |
| 9.3 | G | The Directive does not affect the territorial scope of *rules* as they apply to an intermediary selling a UCITS. |
2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

The client's best interests rule

2.1.1 R (1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

(2) This rule applies in relation to designated investment business carried on:

(a) for a retail client; and

(b) in relation to MiFID or equivalent third country business, for any other client.

[Note: Article 19(1) of MiFID]

Exclusion of liability

2.1.2 R A firm must not, in any communication relating to designated investment business seek to:

(1) exclude or restrict; or

(2) rely on any exclusion or restriction of;

any duty or liability it may have to a client under the regulatory system.

2.1.3 G (1) In order to comply with the client's best interests rule, a firm should not, in any communication to a retail client relating to designated investment business:

(a) seek to exclude or restrict; or

(b) rely on any exclusion or restriction of;

any duty or liability it may have to a client other than under the regulatory system, unless it is honest, fair and professional for it to do so.

(2) The general law, including the Unfair Terms Regulations, also limits the scope for a firm to exclude or restrict any duty or liability to a consumer.
2.2 Information disclosure before providing services

2.2.1 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) That information may be provided in a standardised format.

(3) This rule applies in relation to MiFID or equivalent third country business.

(4) The requirement to provide information about designated investments and proposed investment strategies also applies to a firm in relation to designated investment business other than MiFID or equivalent third country business carried on for a retail client in relation to a derivative, a warrant or stock lending activity.

[Note: Article 19(3) of MiFID]

2.2.2 G A firm to which the rule on providing appropriate information (COBS 2.2.1R) applies should also consider the rules on disclosing information about a firm, its services, costs and associated charges and designated investments in COBS 6.1 and COBS 14.

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 its MiFID or equivalent third-country business, 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 or equivalent third-country business:

(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]

Guidance on inducements

2.3.3 G The obligation of a firm to act honestly, fairly and professionally in accordance with the best interests of its clients includes both the client's best interests rule and the duties under Principles 1 (integrity), 2 (skill, care and diligence) and 6 (customers' interests).

2.3.4 [intentionally blank]
2.3.5 G For the purposes of this section, a non-monetary benefit would include the direction or referral by a firm of an actual or potential item of designated investment business to another person, whether on its own initiative or on the instructions of an associate.

2.3.6 G For the purposes of this section, the receipt by an investment firm of a commission in connection with a personal recommendation or a general recommendation, in circumstances where the advice or recommendation is not biased as a result of the receipt of commission, should be considered as designed to enhance the quality of the recommendation to the client.

[Note: recital 39 of MiFID implementing Directive]

2.3.7 G The fact that a fee, commission or non-monetary benefit is paid or provided to or by an appointed representative does not prevent the application of the rule on inducements.

2.3.8 G The rule on inducements is applicable to a firm and those acting on behalf of a firm in relation to the provision of an investment service or ancillary service to a client. Small gifts and minor hospitality received by an individual in their personal capacity below a level specified in the firm's conflict's of interest policy, will not be relevant for the purpose of the rule on inducements.

2.3.9 [intentionally blank]

2.3.10 [intentionally blank]

2.3.11 [intentionally blank]

2.3.12 [intentionally blank]

2.3.13 [intentionally blank]

2.3.14 [intentionally blank]

2.3.15 [intentionally blank]

2.3.16 [intentionally blank]

Record keeping: inducements

2.3.17 R (1) In relation to its MiFID or equivalent third-country business, 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)(b)(ii) and must keep that record for at least five years from the date on which it was given.

(2) [intentionally blank]

[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 or equivalent third country business, other ancillary services.

2.4.2  G  This section is not relevant to the question of who is the firm’s counterparty for prudential purposes and it does affect any obligation a firm may owe to any other person under the general law.

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 (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 16.3); 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 or equivalent third country business, 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 G (1) If F1 is required to perform a suitability assessment or an appropriateness assessment under COBS 9 or COBS 10, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in COBS 9 (excluding the basic advice rules) or equivalent requirements in another EEA State in performing that assessment.

(2) If F1 is required to perform an appropriateness assessment under COBS 10, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in COBS 10.2 or equivalent requirements in another EEA State in performing that assessment.

Reliance on others: other situations

2.4.6 R (1) This rule applies if the rule on reliance on other investment firms (COBS 2.4.4R) does not apply.

(2) A firm will be taken to be in compliance with any rule in this sourcebook that requires it to obtain information to the extent it can show it was reasonable for it to rely on information provided to it in writing by another person.

2.4.7 E (1) In relying on COBS 2.4.6R, a firm should take reasonable steps to establish that the other person providing written information is not
connected with the firm and is competent to provide the information.

(2) Compliance with (1) may be relied upon as tending to establish compliance with COBS 2.4.6R.

(3) Contravention of (1) may be relied upon as tending to establish contravention of COBS 2.4.6R.

2.4.8 G It will generally be reasonable (in accordance with COBS 2.4.6R(2)) for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional firm, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information.

2.4.9 R Any information that a rule in COBS or CASS requires to be sent to a client may be sent to another person on the instruction of the client so long as the recipient is not connected to the firm.

2.4.10 R In the case of business that is not MiFID or equivalent third country business, if a rule in COBS or CASS requires information to be sent to a client, a firm need not send that information so long as it takes reasonable steps to establish that it has been or will be supplied by another person.
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 G This chapter relates to parts of the Handbook whose application depends on whether a person is a client, a retail client, a professional client or an eligible counterparty. However, it does not apply to the extent that another part of the Handbook provides for a different approach to client categorisation. For example, a separate approach to client categorisation is set out in the definition of a retail client for a firm that is providing basic advice on a stakeholder product.

3.1.3 R The sections in this chapter on general notifications (COBS 3.3) and policies, procedures and records (COBS 3.8) do not apply in relation to a firm that is neither:

(1) conducting designated investment business; nor

(2) in the case of MiFID or equivalent third country business providing an ancillary service that does not constitute designated investment business.

Mixed business

3.1.4 R If a firm conducted business for a client involving both:

(1) MiFID or equivalent third country business; and

(2) other regulated activities subject to this chapter;

it must categorise that client for such business in accordance with the provisions in this chapter that apply to MiFID or equivalent third country business.

3.1.5 G (1) For example, the requirement concerning mixed business will apply if a MiFID investment firm advises a client on whether to invest in a scheme or a life policy. This is because the former is within the scope of MiFID and the latter is not. In such a case, the MiFID client categorisation requirements prevail.

(2) The requirement does not apply where the MiFID or equivalent third country business is provided separately from the other regulated activities. Where this is the case, in accordance with Principle 7 (communications with clients) the basis on which the different
activities will be performed, including any differences in the categorisations that apply, should be made clear to the client.

3.2 Clients

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 or equivalent third country business, 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 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 G A corporate finance contact or a venture capital contact is not a client under the first limb of the general definition. This is because a firm does not provide a service to such a contact. However, it will be a client under the third limb of the general definition for the purposes of the financial promotion rules if the firm communicates or approves a financial promotion that is or is likely to be communicated to such a contact.

Who is the client?

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) In relation to a firm establishing, operating or winding up a personal pension scheme or a stakeholder pension scheme, a member or beneficiary of that scheme is a client of the firm.

(3) If a firm that does not fall within (2) 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) In relation to business that is neither MiFID or equivalent third country business, if a firm provides services to a collective investment scheme that does not have separate legal personality, that collective investment scheme will be the firm's client.

(5) If a firm provides services relating to a contribution to or interest in a CTF (except for a personal recommendation relating to a contribution to a CTF or in relation to the communication or approval of a financial promotion), the firm's only client is:

(a) the registered contact, if there is one;

(b) otherwise, the person to whom the annual statement must be sent in accordance with Regulation 10 of the CTF Regulations.

3.3 General notifications

3.3.1 R In relation to MiFID or equivalent third country business, 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]

3.3.2 G This chapter requires a firm to allow a client to request re-categorisation as a client that benefits from a higher degree of protection (see COBS 3.7.1R). A firm must therefore notify a client that is categorised as a professional client or an eligible counterparty of its right to request a different categorisation whether or not the firm will agree to such requests. However, a firm need only notify a client of a right to request a different categorisation involving a lower level of protection if it is prepared to consider such requests.

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 R If a firm provides services relating to a CTF (except for a personal recommendation relating to a contribution to a CTF), the firm's client is a retail client, even if it would otherwise be categorised as a professional client or an eligible counterparty under this chapter.

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) in relation to MiFID or equivalent third country business, a large undertaking meeting two of the following size requirements on a
company basis:

(a) balance sheet total of EUR 20,000,000;
(b) net turnover of EUR 40,000,000;
(c) own funds of EUR 2,000,000;

(3) in relation to business that is not MiFID or equivalent third country business, a large undertaking meeting either of the following conditions:

(a) a body corporate (including a limited liability partnership) which has (or any of whose holding companies or subsidiaries has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time);

(b) a large undertaking that meets (or any of whose holding companies or subsidiaries meets) two of the following tests:

(i) a balance sheet total of EUR 12,500,000;
(ii) a net turnover of EUR 25,000,000;
(iii) an average number of employees during the year of 250;

(4) 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;

(5) another institutional investor whose main activity is to invest in financial instruments (in relation to the firm's MiFID or equivalent third country business) 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 (1) and (3) and, where applicable, (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”);
in relation to MiFID or equivalent third country business, 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 EUR 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.
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 (1) 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 *firm* must take the appropriate action.

(2) Where the appropriate action involves re-categorising that client as a *retail client*, the *firm* must notify that *client* of its new categorisation.

[Note: fourth paragraph of section II.2 of annex II to MiFID and article 28(1) of the MiFID implementing Directive]

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 or equivalent third country business, 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]

3.6.3 G For the purpose of COBS 3.6.2R(6), a financial institution includes regulated institutions in the securities, banking and insurance sectors.

Elective eligible counterparties

3.6.4 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 3.5.2R(5)); 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 or equivalent third country business, 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]

3.6.5 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.

3.6.6 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

3.6.7 R In the case of MiFID or equivalent third country business, 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.
3.7.5 R (1) If, in relation to MiFID or equivalent third country business 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.

3.7.6 G (1) In accordance with Principle 7 (communications with clients) if a firm at its own initiative re-categorises a client in accordance with this section, it should notify that client of its new category under this section.

(2) If the firm already has an agreement with the client, it should also consider any contractual requirements concerning the amendment of that agreement.

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

(1) on a general basis; or

(2) on a trade by trade basis; or

(3) in respect of one or more specified rules; or

(4) in respect of one or more particular services or transactions; or

(5) in respect of one or more types of product or transaction.

3.7.8 G Re-categorising a client as a retail client under this section does not necessarily mean it will become an eligible complainant under DISP.

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.
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.

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

(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 the relevant period after the firm ceases to carry on business with or for that client.

The relevant periods are:

(a) indefinitely, in relation to a pension transfer, pension opt-out or FSAVC;

(b) at least five years, in relation to a life policy or pension contract;

(c) five years in relation to MiFID or equivalent third country business; and

(d) three years in any other case.

If a firm provides the same form of notice to more than one client, it need not maintain a separate copy of it for each client, provided it keeps evidence of despatch of the notice to each client.
4 Communicating with clients, including financial promotions

4.1 Application

Who? What?

4.1.1 R This chapter applies to a firm:

(1) communicating with a client in relation to its designated investment business;

(2) communicating or approving a financial promotion other than:

(a) a financial promotion of qualifying credit, a home purchase plan or a home reversion plan; or

(b) a financial promotion in respect of a non-investment insurance contract; or

(c) a promotion of an unregulated collective investment scheme that would breach section 238(1) of the Act if made by an authorised person (firms may not communicate or approve such promotions).

4.1.2 G This chapter applies in relation to an authorised professional firm in accordance with COBS 18 (Specialist regimes).

4.1.3 G A firm is required to comply with the financial promotion rules in relation to a financial promotion communicated by its appointed representative even where the financial promotion does not require approval because of the exemption in article 16 of the Financial Promotion Order (Exempt persons).

[Note: see section 39 of the Act]

4.1.4 G (1) In COBS 4.3.1R, COBS 4.5.8R and COBS 4.7.1R, the defined terms "financial promotion" and "direct offer financial promotion" include, in relation to MiFID or equivalent third country business, all communications that are marketing communications within the meaning of MiFID.

(2) In the case of MiFID or equivalent third country business, certain requirements in this chapter are subject to an exemption for the communication of a third party prospectus in certain circumstances. This has a similar effect to the exemption in article 70(1)(c) of the Financial Promotion Order, which is referred to in the definition of an excluded communication.

4.1.5 G (1) A firm communicating with an eligible counterparty should have regard to the application of COBS to eligible counterparty business
This chapter does not apply in relation to communicating with an eligible counterparty but elements of the requirements in PRIN may apply.

4.1.6 G Approving a financial promotion without communicating it is not MiFID or equivalent third country business. Communicating a financial promotion to a person other than a client is also not MiFID or equivalent third country business. Further guidance on what amounts to MiFID business may be found in PERG 13.

4.1.7 G A reference in this chapter to MiFID or equivalent third country business includes a reference to communications that occur before an agreement to perform services in relation to MiFID or equivalent third country business.

[Note: see recital 82 to the MiFID implementing Directive]

Where? General position

4.1.8 R (1) In relation to communications by a firm to a client in relation to its designated investment business this chapter applies in accordance with the general application rule and the rule on business with UK clients from an overseas establishment (COBS 1 Annex 1 Part 2 paragraph 2.1R).

(2) In addition, the financial promotion rules apply to a firm in relation to:

(a) the communication of a financial promotion to a person inside the United Kingdom;

(b) the communication of a cold call to a person outside the United Kingdom, unless:

(i) it is made from a place outside the United Kingdom; and

(ii) 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

(c) the approval of a financial promotion for communication to a person inside the United Kingdom.

Where? Modifications to comply with EU law

4.1.9 G (1) The EEA territorial scope rule modifies the general territorial scope of the rules in this chapter to the extent necessary to be compatible with European law. This means that in a number of cases, the rules in this chapter will apply to communications made by UK firms to persons located outside the United Kingdom and will not apply to communications made to persons inside the United Kingdom by EEA
firms. Further guidance on this is located in COBS 1 Annex 1.

(2) One effect of the EEA territorial scope rule is that the rules in this chapter will not generally apply to a simplified prospectus that relates to a simplified prospectus scheme from another EEA state.

(3) The financial promotion rules do not apply to incoming communications in relation to the MiFID business of an investment firm from another EEA State that are, in its home member state, regulated under MiFID in another EEA State. For the purpose of article 36 of the Financial Promotion Order the FSA does not make any rules in relation to such incoming communications.

4.1.10 G Firms should note the territorial scope of this chapter is also affected by:

(1) the disapplication for financial promotions originating outside the United Kingdom that are not capable of having an effect within the United Kingdom (section 21(3) of the Act (Restrictions on financial promotion)) (see the defined term “excluded communication”);

(2) the exemptions for overseas communicators (see the defined term “excluded communication”); and

(3) the rules on financial promotions with an overseas element (see COBS 4.9).

4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

4.2.1 R (1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

(2) This rule applies in relation to:

(a) a communication by the firm to a client in relation to designated investment business other than a third party prospectus;

(b) a financial promotion communicated by the firm that is not:

(i) an excluded communication;

(ii) a non-retail communication;

(iii) a third party prospectus; and

(c) a financial promotion approved by the firm.

[Note: article 19(2) of MiFID and recital 52 to the MiFID implementing
4.2.2 G The *fair, clear and not misleading rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey. So a communication addressed to a *professional client* may not need to include the same information, or be presented in the same way, as a communication addressed to a *retail client*.

4.2.3 G Section 397 of the *Act* creates a criminal offence relating to certain misleading statements and practices.

Fair, clear and not misleading financial promotions

4.2.4 G A *firm* should ensure that a *financial promotion*:

1. for a product or service that places a *client's* capital at risk makes this clear;

2. that quotes a yield figure gives a balanced impression of both the short and long term prospects for the *investment*;

3. that promotes an *investment* or service whose charging structure is complex, or in relation to which the *firm* will receive more than one element of remuneration, includes the information necessary to ensure that it is fair, clear and not misleading and contains sufficient information taking into account the needs of the recipients;

4. that names the *FSA* as its regulator and refers to matters not regulated by the *FSA* makes clear that those matters are not regulated by the *FSA*;

5. that offers *packaged products* or *stakeholder products* not produced by the *firm*, gives a fair, clear and not misleading impression of the producer of the product or the manager of the underlying investments.

4.2.5 G A *firm* designing a *financial promotion* relating to a *deposit* may find it helpful to take account of the British Bankers’ Association/Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts.

4.3 Financial promotions to be identifiable as such

4.3.1 R (1) A *firm* must ensure that a *financial promotion* addressed to a *client* is clearly identifiable as such.

[Note: article 19(2) of MiFID]

(2) In the case of a *financial promotion* that relates to the *firm's MiFID or equivalent third country business*, this *rule* does not apply to the
extent that a financial promotion is a third party prospectus.

(3) In the case of a financial promotion that does not relate to the firm's MiFID or equivalent third country business, this rule applies to communicating or approving a financial promotion but does not apply:

(a) to the extent that it is an excluded communication;

(b) to the extent that it is a prospectus advertisement to which PR 3.3 applies;

(c) if it is image advertising;

(d) if it is a non-retail communication;

(e) to the extent that it relates to a deposit or to a pure protection contract that is a long-term care insurance contract.

4.4 Compensation information

4.4.1 R A firm must ensure that any reference in advertising to an investor compensation scheme established under the ICD is limited to a factual reference to the scheme.

[Note: article 10(3) of the Investor Compensation Directive]

4.4.2 G The Credit Institutions (Protection of Deposits) Regulations 1995 may also apply in relation to a communication with a client.

4.5 Communicating with retail clients

Application

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

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

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

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

(2) This section does not apply in relation to a communication that is made by a firm in relation to its MiFID or equivalent third country business:
(a) to the extent that it is a third party prospectus; or

(b) if it is image advertising.

(3) This section does not apply in relation to a communication that is not made by a firm in relation to its MiFID or equivalent third country business:

(a) to the extent that it is an excluded communication;

(b) to the extent that it is a prospectus advertisement to which PR 3.3 applies;

(c) if it is image advertising.

General rule

4.5.2 R A firm must ensure that information:

(1) includes the name of the firm;

(2) is accurate and 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]

4.5.3 G The name of the firm may be a trading name or shortened version of the legal name of the firm, provided the retail client can identify the firm communicating the information.

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

4.5.5 G When communicating information, a firm should consider whether omission of any relevant fact will result in information being insufficient, unclear, unfair or misleading.

Comparative information

4.5.6 R (1) If information compares relevant business, relevant investments, or
persons who carry on relevant business, a firm must ensure that:

(a) the comparison is meaningful and presented in a fair and balanced way; and

(b) in relation to MiFID or equivalent third country business;
   
   (i) the sources of the information used for the comparison are specified; and
   
   (ii) the key facts and assumptions used to make the comparison are included.

(2) In this rule, in relation to MiFID or equivalent third country business ancillary services are to be regarded as relevant business.

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

Referring to tax

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

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

(2) This rule applies in relation to MiFID or equivalent third country business or, otherwise, to a financial promotion. However, it does not apply to a financial promotion to the extent that it relates to:

(a) a deposit other than a cash deposit ISA or a cash deposit CTF; or

(b) a pure protection contract that is a long-term care insurance contract.

Consistent financial promotions

4.5.8 R (1) A firm must ensure that information contained in a financial promotion is consistent with any information the firm provides to a retail client in the course of carrying on designated investment business or, in the case of MiFID or equivalent third country business, ancillary services.

[Note: article 29(7) of the MiFID implementing Directive]

(2) This rule does not apply to a financial promotion to the extent that it relates to:

(a) a deposit; or

(b) a pure protection contract that is a long-term care insurance contract.
contract.

4.6 Past, simulated past and future performance

Application

4.6.1 R (1) Subject to (2) and (3), this section applies:

(a) in the case of MiFID or equivalent third country business, in relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a retail client; and

(b) in relation to approving or communicating a financial promotion.

(2) This section does not apply in relation to a communication by a firm in relation to its MiFID or equivalent third country business:

(a) to the extent that the communication is a third party prospectus; or

(b) if it is image advertising.

(3) This section does not apply in relation to a communication by a firm other than in relation to its MiFID or equivalent third country business:

(a) to the extent that it is an excluded communication;

(b) to the extent that it is a prospectus advertisement to which PR 3.3 applies;

(c) if it is image advertising;

(d) to the extent that it relates to a deposit that is not a structured deposit;

(e) to the extent that it relates to a pure protection contract that is a long-term care insurance contract.

Past performance

4.6.2 R A firm must ensure that information that contains an indication of past performance of relevant business, a relevant investment or a financial index, 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 five 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 five years, or such longer period as the firm may decide, and in every case that performance information must be based on and show complete 12-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]

4.6.3 G The obligations relating to describing performance should be interpreted in the light of their purpose and in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey. For example, a periodic statement in relation to managing investments that is sent in accordance with the rules on reporting information to clients (see COBS 16) may include past performance as its most prominent feature.

4.6.4 G If a financial promotion includes information referring to the past performance of a packaged product, a firm will comply with the rule on appropriate performance information (COBS 4.6.2R(2)) if the financial promotion includes, in the case of a scheme, unit-linked life policy, unit-linked personal pension scheme or unit-linked stakeholder pension scheme (other than a unitised with-profits life policy or stakeholder pension scheme) past performance information calculated and presented in accordance with the table in COBS 4.6.4AG.

4.6.4A G This Table belongs to COBS 4.6.4G
### Percentage growth

<table>
<thead>
<tr>
<th>[Fund name]</th>
<th>Quarter/Year - Quarter/Year pgr%</th>
<th>Quarter/Year - Quarter/Year pgr%</th>
<th>Quarter/Year - Quarter/Year pgr%</th>
<th>Quarter/Year - Quarter/Year pgr%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Notes:**

1. The table should show performance information for five (or if performance information for fewer than five is available, all) complete 12-month periods, the most recent of which ends with the last full quarter preceding the date on which the *firm* first communicates or approves the financial promotion.

2. For products with performance data for fewer than five 12-month periods, *firms* should clearly indicate that performance data does not exist for the relevant periods.

3. No allowance should be made for tax recoveries on income for pension contracts, ISAs or PEPs.

4. pgr is the percentage growth rate for the year, where:
   \[ pgr = \left(\frac{P1 - P0}{PO}\right) \times 100 \]
   and rounded to the nearest 0.1%, with exact 0.05% rounded to the nearest even 0.1%; and where P0 is the price at the start of the 12-month period and P1 is the price on the same day in the following 12-month period.

5. The prices should allow for any net distributions to be reinvested.

6. The price at P1 must be adjusted for any charges since the date of P0 which are based on a proportion of the fund and are levied by the cancellation of units.

7. The *firm* should use single pricing, or (if this is not available) bid to bid prices, unless the *firm* has reasonable grounds to be satisfied that another basis would better reflect the past performance of the fund.

4.6.4B G (1) The *firm* should present the information referred to in COBS 4.6.4G no less prominently than any other past performance information.
(2) This guidance does not apply to a prospectus or simplified prospectus drawn up in accordance with COLL.

4.6.5 G (1) In relation to a packaged product (other than a scheme, a unit-linked life policy, unit-linked personal pension scheme or a unit-linked stakeholder pension scheme (that is not a unitised with-profits life policy or stakeholder pension scheme)), the information should be given on:

(a) an offer to bid basis (which should be stated) if there is an actual return or comparison of performance with other investments; or

(b) an offer to offer, bid to bid or offer to bid basis (which should be stated) if there is a comparison of performance with an index or with movements in the price of units; or

(c) a single pricing basis with allowance for charges.

(2) If the pricing policy of the investment has changed, the prices used should include such adjustments as are necessary to remove any distortions resulting from the pricing method.

Simulated past performance

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

(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 paragraphs (1) to (3), (5) and (6) of the rule on past performance (COBS 4.6.2R) are complied with; and

(4) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

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

Future performance

4.6.7 R (1) A firm must ensure that information that contains an indication of future performance of relevant business, a relevant investment, a structured deposit or a financial index, satisfies the following conditions:
(a) it is not based on and does not refer to simulated past performance;

(b) it is based on reasonable assumptions supported by objective data;

(c) it discloses the effect of commissions, fees or other charges if the indication is based on gross performance; and

(d) it contains a prominent warning that such forecasts are not a reliable indicator of future performance.

(2) Other than in relation to MiFID or equivalent third country business, this rule only applies to financial promotions that relate to a financial instrument (or a financial index that relates exclusively to financial instruments) or a structured deposit.

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

4.6.8 G A firm should not provide information on future performance if it is not able to obtain the objective data needed to comply with the rule on future performance. For example, objective data in relation to EIS shares may be difficult to obtain.

4.7 Direct offer financial promotions

4.7.1 R (1) Subject to (3) and (4), a firm must ensure that a direct offer financial promotion that is addressed to, or disseminated in such a way that it is likely to be received by, a retail client contains:

(a) such of the information referred to in the rules on information disclosure (COBS 6.1.4R, COBS 6.1.6R, COBS 6.1.7R, COBS 6.1.9R, COBS 14.3.2R, COBS 14.3.3R, COBS 14.3.4R and COBS 14.3.5R) as is relevant to that offer or invitation; and

[Note: article 29(8) of the MiFID implementing Directive, the rules listed implement Articles 30 to 33 of the MiFID implementing Directive]

(b) if it does not relate to MiFID or equivalent third country business, additional appropriate information about the relevant business and relevant investments so that the client is reasonably able to understand the nature and risks of the relevant business and relevant investments and consequently to take investment decisions on an informed basis.

(2) This rule does not require the information in (1) to be included in a direct offer financial promotion 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.

(3) This rule does not apply in relation to a communication made by a firm in relation to MiFID or equivalent third country business:

(a) to the extent that it is a third party prospectus;
(b) if it is image advertising.

(4) This section does not apply in relation to a communication that is not made by a firm in relation to MiFID or equivalent third country business:

(a) to the extent that it is an excluded communication;
(b) to the extent that it is a prospectus advertisement to which PR 3.3 applies;
(c) if it is image advertising;
(d) to the extent that it relates to a deposit that is not a cash deposit ISA or cash deposit CTF;
(e) to the extent that it relates to a pure protection contract that is a long-term care insurance contract.

(5) In this rule, in relation to MiFID or equivalent third country business ancillary services are to be regarded as relevant business.

Guidance

4.7.2 G Although COBS 4.7.1R(1)(b) does not apply in relation to MiFID or equivalent third country business, similar requirements may apply under COBS 2.2.

4.7.3 G COBS 4.7.1R(2) allows a firm to communicate a direct offer financial promotion that does not contain all the information required by COBS 4.7.1R(1), if the firm can demonstrate that the client has referred to the required information before the client makes or accepts an offer in response to the direct offer financial promotion.

4.7.4 G In order to enable a client to make an informed assessment of a relevant investment or relevant business, a firm may wish to include in a direct offer financial promotion:

(1) a summary of the taxation of any investment to which it relates and the taxation consequences for the average member of the group to whom it is directed or by whom it is likely to be received; and

(2) a statement that the recipient should seek a personal recommendation if he has any doubt about the suitability of the investments or services being promoted.
4.8 Cold calls and other promotions that are not in writing

Application

4.8.1 R This section applies to a firm in relation to a financial promotion that is not in writing, but it does not apply:

(1) to the extent that the financial promotion is an excluded communication;

(2) if the financial promotion is image advertising;

(3) to the extent that the financial promotion relates to a deposit;

(4) to the extent that the financial promotion relates to a pure protection contract that is a long-term care insurance contract.

Restriction on cold calling

4.8.2 R A firm must not make a cold call unless:

(1) the recipient has an established existing client relationship with the firm and the relationship is such that the recipient envisages receiving cold calls; or

(2) the cold call relates to a generally marketable packaged product which is not:

   (a) a higher volatility fund; or

   (b) a life policy with a link (including a potential link) to a higher volatility fund; or

(3) the cold call relates to a controlled activity to be carried on by an authorised person or exempt person and the only controlled investments involved or which reasonably could be involved are:

   (a) readily realisable securities (other than warrants); and

   (b) generally marketable non-geared packaged products.

Promotions that are not in writing

4.8.3 R A firm must not initiate a non-written financial promotion communicated to a particular person outside the firm’s premises, unless the person communicating it:

(1) only does so at an appropriate time of the day;

(2) identifies himself and the firm he represents at the outset and makes
clear the purpose of the communication;

(3) clarifies if the client would like to continue with or terminate the communication, and terminates the communication at any time that the client requests it; and

(4) gives a contact point to any client with whom he arranges an appointment.

4.9 Financial promotions with an overseas element

Application

4.9.1 R (1) Subject to (2) and (3), this section applies to financial promotions that relate to the business of an overseas person.

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

(3) This section does not apply to a communication by a firm other than in relation to its MiFID or equivalent third country business:

(a) to the extent that it is an excluded communication;

(b) to the extent that it is a prospectus advertisement to which PR 3.3 applies;

(c) if it is image advertising;

(d) to the extent that it relates to a deposit;

(e) to the extent that it relates to a pure protection contract that is a long-term care insurance contract.

4.9.2 G Approving a financial promotion for communication by an unauthorised person is not MiFID or equivalent third country business.

Financial promotions for the business of an overseas person

4.9.3 R A firm must not communicate or approve a financial promotion which relates to a particular relevant investment or relevant business of an overseas person, unless:

(1) the financial promotion makes clear which firm has approved or communicated it and, where relevant, explains:

(a) that the rules made under the Act for the protection of retail clients do not apply;
(b) the extent and level to which the compensation scheme will be available, or if the scheme will not be available, a statement to that effect; and

(c) if the communicator wishes, the protection or compensation available under another system of regulation; and

(2) the firm has no reason to doubt that the overseas person will deal with retail clients in the United Kingdom in an honest and reliable way.

Financial promotions for an overseas long-term insurer

4.9.4 R A firm must not communicate or approve a financial promotion to enter into a life policy with a person who is not:

(1) an authorised person; or

(2) an exempt person who is exempt in relation to effecting or carrying out contracts of insurance of the class to which the financial promotion relates; or

(3) an overseas long-term insurer that is entitled under the law of its home country or territory to carry on there insurance business of the class to which the financial promotion relates.

4.9.5 R A financial promotion for an overseas long-term insurer, which has no establishment in the United Kingdom, must include:

(1) the full name of the overseas long-term insurer, the country where it is registered, and, if different, the country where its head office is situated;

(2) a prominent statement that 'holders of policies issued by the company will not be protected by the Financial Services Compensation Scheme if the company becomes unable to meet its liabilities to them'; and

(3) if any trustee, investment manager or United Kingdom agent of the overseas long-term insurer is named which is not independent of the overseas long-term insurer, a prominent statement of that fact.

4.9.6 R A financial promotion for an overseas long-term insurer which is authorised to carry on long-term insurance business in any country or territory listed in paragraph (c) of the Glossary definition of overseas long-term insurer must also include:

(1) the full name of any trustee of property of any description which is retained by the overseas long-term insurer in respect of the promoted contracts;

(2) an indication whether the investment of such property (or any part of it) is managed by the overseas long-term insurer or by another person.
and the full name of any investment manager;

(3) the registered office of any such trustee and of any investment manager and of his principal office (if different); and

(4) where any person in the United Kingdom takes, or may take, any steps on behalf of the overseas long-term insurer to enter into a promoted contract, the following details:

(a) the full name of the overseas long-term insurer;
(b) the registered office, head office or principal place of business of that person in the United Kingdom; and
(c) if there is more than one such person, the principal or main person in the United Kingdom.

4.9.7 R If a financial promotion relates to a life policy with an overseas long-term insurer but does not name the overseas long-term insurer by giving its full name or its business name:

(1) it must include the following prominent statement: "This financial promotion relates to an insurance company which does not, and is not authorised to, carry on in any part of the United Kingdom the class of insurance business to which this promotion relates. This means that the management and solvency of the company are not supervised by the Financial Services Authority. Holders of policies issued by the company will not have the right to complain to the Financial Ombudsman Service if they have a complaint against the company and will not be protected by the Financial Services Compensation Scheme if the company should become unable to meet its liabilities to them"; and

(2) if it also refers to other investments, it must make this clear.

4.10 Systems and controls and approving and communicating financial promotions

Systems and controls

4.10.1 G The rules in SYSC 3 and SYSC 4 require a firm that communicates with a client in relation to designated investment business, or communicates or approves a financial promotion, to put in place systems and controls or policies and procedures in order to comply with the rules in this chapter.

Approving financial promotions

4.10.2 R (1) Before a firm approves a financial promotion for communication by an unauthorised person, it must confirm that the financial promotion
complies with the financial promotion rules.

(2) If, at any time after a firm has complied with (1), a firm becomes aware that a financial promotion no longer complies with the financial promotion rules, it must withdraw its approval and notify any person that it knows to be relying on its approval as soon as reasonably practicable.

(3) When approving a financial promotion, the firm must confirm compliance with the financial promotion rules that would have applied if the financial promotion had been communicated by a firm other than in relation to MiFID or equivalent third country business.

4.10.3 G (1) Section 21(1) of the Act (Restrictions on financial promotion) prohibits an unauthorised person from communicating a financial promotion, in the course of business, unless an exemption applies or the financial promotion is approved by a firm. Many of the rules in this chapter apply when a firm approves a financial promotion in the same way as when a firm communicates a financial promotion itself.

(2) A firm may also wish to approve a financial promotion that it communicates itself. This would ensure that an unauthorised person who then also communicates the financial promotion to another person will not contravene the restriction on financial promotion in the Act (section 21).

(3) Approving a financial promotion for communication by an unauthorised person is not MiFID or equivalent third country business.

(4) A firm may not approve a financial promotion relating to an unregulated collective investment scheme unless the firm would be able to communicate the promotion without breaching section 238(1) of the Act (see section 240 of the Act). The exemptions from that section in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (as amended from time to time) are relevant.

4.10.4 R A firm must not approve a financial promotion to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

4.10.5 R If a firm approves a financial promotion in circumstances in which one or more of the financial promotion rules, or the prohibition on approval of promotions for collective investment schemes in section 240(1) of the Act (Restriction on approval), are expressly disapproved, the approval must be given on terms that it is limited to those circumstances.
4.10.6 G For example, if a firm approves a financial promotion for communication to a professional client or an eligible counterparty, the approval must be limited to communication to such persons.

4.10.7 G If an approval is limited, and an unauthorised person communicates the financial promotion to persons not covered by the approval, the unauthorised person may commit an offence under the restriction on financial promotion in the Act (section 21). A firm giving a limited approval may wish to notify the unauthorised person accordingly.

Communicating financial promotions

4.10.8 G If a firm continues to communicate a financial promotion when the financial promotion no longer complies with the rules in this chapter, it will breach those rules.

4.10.9 G A financial promotion which is clearly only relevant at a particular date will not cease to comply with the financial promotion rules merely because the passage of time has rendered it out-of-date; an example would be a dated analyst's report.

Relying on another firm's confirmation of compliance

4.10.10 R (1) A firm (A) will not contravene any of the financial promotion rules if it communicates a financial promotion which has been produced by another person and:

(a) A takes reasonable care to establish that another firm (B) has confirmed that the financial promotion complies with the financial promotion rules;

(b) A takes reasonable care to establish that it communicates the financial promotion only to recipients of the type for whom it was intended at the time B carried out the confirmation exercise; and

(c) so far as A is, or ought reasonably to be, aware:

   (i) the financial promotion has not ceased to be fair, clear and not misleading since that time; and

   (ii) B has not withdrawn the financial promotion.

(2) This rule does not apply in relation to MiFID or equivalent third country business.

4.10.11 G A firm should inform anyone relying on its confirmation of compliance if it becomes aware that the financial promotion no longer complies with the rules in this chapter.
4.11 Record keeping: financial promotion

4.11.1 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 in relation to a financial promotion relating to:

   (a) a pension transfer, pension opt-out or FSAVC, indefinitely;

   (b) a life policy, OPS, SSAS, personal pension scheme or stakeholder pension scheme, for six years;

   (c) MiFID or equivalent third country business, for five years; and

   (d) any other case, for three years.

(4) This rule does not apply in relation to a communication that is made by a firm in relation to its MiFID or equivalent third country business:

   (a) to the extent that the communication is a third party prospectus; or

   (b) if it is image advertising.

(5) This rule does not apply in relation to a communication that is not made by a firm in relation to MiFID or equivalent third country business:

   (a) to the extent that it is an excluded communication;

   (b) to the extent that it is a prospectus advertisement to which PR 3.3 applies;

   (c) if it is image advertising;

   (d) to the extent that it relates to a deposit;

   (e) to the extent that it relates to a pure protection contract that is a long-term care insurance contract.

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

4.11.2 G A firm should consider maintaining a record of why it is satisfied that the financial promotion complies with the financial promotion rules.
If the *financial promotion* includes market information that is updated continuously in line with the relevant market, the record-keeping *rules* do not require a firm to record that information.
5 Distance communications

5.1 The distance marketing disclosure rules

The distance marketing disclosure rules

5.1.1 R A firm must provide a consumer with the distance marketing information (COBS 5 Annex 1R) in good time before the consumer is bound by a distance contract or offer.

[Note: article 3(1) of the Distance Marketing Directive]

5.1.2 R A firm must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent, such as minors.

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

5.1.3 R When a firm makes a voice telephony communication to a consumer, it must 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]

5.1.4 R A firm must ensure that information on contractual obligations to be communicated to a consumer during the pre-contractual phase is in conformity with the contractual obligations which would 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]

Terms and conditions, and form

5.1.5 R A firm must communicate to the consumer all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (COBS 5.1.1R to COBS 5.1.4R) on a durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.

[Note: article 5(1) of the Distance Marketing Directive]

5.1.6 G A firm will provide information, or communicate contractual terms and conditions, to a consumer if another person provides the information, or communicates the terms and conditions, to the consumer on its behalf.
Exception: distance contract as a stage in the provision of another service

5.1.7 R This section does not apply to a distance contract to deal as agent, advise or arrange, if the distance contract is concluded merely as a stage in the provision of another service by the firm or another person.

[Note: recital 19 to the Distance Marketing Directive]

Exception: successive operations

5.1.8 R In the case of a distance contract comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the rules in this section only apply to the initial agreement.

[Note: article 1(2) of the Distance Marketing Directive]

5.1.9 R If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure rules (COBS 5.1.1R to COBS 5.1.4R) will only apply:

(1) when the first operation is performed; and

(2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[Note: recital 16 and article 1(2) of the Distance Marketing Directive]

5.1.10 G In this section:

(1) 'initial service agreement' includes the opening of a bank account and the concluding of a portfolio management contract;

(2) 'operations' includes the deposit or withdrawal of funds to or from a bank account and transactions made within the framework of a portfolio management contract; and

(3) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with one's existing bank account, does not constitute an 'operation' but an additional contract to which the rules in this section apply. The subscription to new units of the same collective investment scheme is considered to be one of 'successive operations of the same nature'.

[Note: recital 17 of the Distance Marketing Directive]

5.1.11 G In the FSA’s view, other examples of:

(1) ‘initial service agreement’ include:

(a) subscribing to an investment trust savings scheme; or
(b) concluding a life policy, personal pension scheme or stakeholder pension scheme that includes a pre-selected option providing for future increases or decreases in regular premiums or payments; and

(2) ‘operations’ include:

(a) successive purchases or sales of shares under an investment trust savings scheme; and

(b) subsequent index-linked changes to premiums or increases or decreases to pension contributions following fluctuations in salary.

Exception: voice telephony communications

5.1.12 R In the case of a voice telephony communication, and subject to the explicit consent of the consumer, only the abbreviated distance marketing information (COBS 5 Annex 2R) needs to be provided during that communication. However, a firm must still provide the distance marketing information (COBS 5 Annex 1R) on a durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer, unless another exception applies.

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

Exception: means of distance communication not enabling disclosure

5.1.13 R A firm may provide the distance marketing information (COBS 5 Annex 1R) and the contractual terms and conditions in a durable medium immediately after the conclusion of a distance contract, if the contract has been concluded at a consumer's request using a means of distance communication that does not enable the provision of that information in that form in good time before the consumer is bound by any distance contract or offer.

[Note: article 5(2) of the Distance Marketing Directive]

Distance marketing: other provisions

5.1.14 R If, at any time during the contractual relationship, a consumer that is a party to a distance contract asks a firm:

(1) for a paper copy of the terms and conditions of that contract; or

(2) to change the means of distance communication used;

the firm must provide that paper copy or change the means of distance communication used, unless (in the latter case) that would be incompatible with the contract or the nature of the service provided.

[Note: article 5(3) of the Distance Marketing Directive]

Unsolicited services
5.1.15 R (1) A firm must not enforce, or seek to enforce, any obligations under a distance contract against a consumer, in the event of an unsolicited supply of services, the absence of reply not constituting consent.

(2) This rule does not apply to the tacit renewal of a distance contract.

[Note: article 9 of the Distance Marketing Directive]

Mandatory nature of consumer's rights

5.1.16 R If a consumer purports to waive any of the consumer’s rights created or implied by the rules in this section, a firm must not accept that waiver, nor seek to rely on or enforce it against the consumer.

[Note: article 12 of the Distance Marketing Directive]

5.1.17 R If a firm proposes to enter into a distance contract with a consumer that will be governed by the law of a country outside the EEA, the firm must ensure that the consumer will not lose the protection created by the rules in this section if the distance contract has a close link with the territory of one or more EEA States.

[Note: articles 12 and 16 of the Distance Marketing Directive]

5.2 E-Commerce

Application

5.2.1 R This section applies to a firm that is an electronic commerce activity provider.

Information about the electronic commerce activity provider and its products or services

5.2.2 R A firm must make at least the following information easily, directly and permanently accessible to the recipients of the information society services it provides:

(1) its name;
(2) the geographic address at which it is established;
(3) the details of the firm, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
(4) an appropriate statutory status disclosure statement (GEN 4 Annex 1R), together with a statement which explains that it is on the FSA register and includes its FSA register number;
(5) if it is a professional firm, or a person regulated by the equivalent of a
designated professional body in another EEA State:

(a) the name of the professional body (including any designated professional body) or similar institution with which it is registered;

(b) the professional title and the EEA State where it was granted;

(c) a reference to the applicable professional rules in the EEA State of establishment and the means to access them; and

(6) where the firm undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the E-Commerce Directive]

5.2.3 R If a firm refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the E-Commerce Directive]

5.2.4 R A firm must ensure that commercial communications which are part of, or constitute, an information society service, comply with the following conditions:

(1) the commercial communication must be clearly identifiable as such;

(2) the person on whose behalf the commercial communication is made must be clearly identifiable;

(3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and

(4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the E-Commerce Directive]

5.2.5 R An unsolicited commercial communication sent by e-mail by a firm established in the United Kingdom must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the E-Commerce Directive]

Requirements relating to the placing and receipt of orders

5.2.6 R A firm must (except when otherwise agreed by parties who are not consumers):
(1) give an ECA recipient at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:

(a) the different technical steps to follow to conclude the contract;
(b) whether or not the concluded contract will be filed by the firm and whether it will be accessible;
(c) the technical means for identifying and correcting input errors prior to the placing of the order; and
(d) the languages offered for the conclusion of the contract;

(2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;

(3) (when an ECA recipient places an order through technological means), acknowledge the receipt of the recipient’s order without undue delay and by electronic means; and

(4) make available to an ECA recipient, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and (2) and 11(1) and (2) of the E-Commerce Directive]

5.2.7 R For the purposes of COBS 5.2.6R(3), an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

[Note: article 11(1) of the E-Commerce Directive]

5.2.8 R Contractual terms and conditions provided by a firm to an ECA recipient must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the E-Commerce Directive]

Exception: contract concluded by e-mail

5.2.9 R The requirements relating to the placing and receipt of orders (COBS 5.2.6R) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: article 10(4) and 11(3) of the E-Commerce Directive]
### COBS 5 Annex 1R: Distance marketing information

This Annex belongs to COBS 5.1.1R (The distance marketing disclosure rules)

<table>
<thead>
<tr>
<th>Information about the firm</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(1)</strong> The name and the main business of the <em>firm</em>, the geographical address at which it is established and any other geographical address relevant for the <em>consumer’s</em> relations with the <em>firm</em>.</td>
</tr>
<tr>
<td><strong>(2)</strong> Where the <em>firm</em> has a representative established in the <em>consumer’s</em> EEA State of residence, the name of that representative and the geographical address relevant for the <em>consumer’s</em> relations with that representative.</td>
</tr>
<tr>
<td><strong>(3)</strong> Where the <em>consumer’s</em> dealings are with any professional other than the <em>firm</em>, the identity of that professional, the capacity in which he is acting with respect to the <em>consumer</em>, and the geographical address relevant to the <em>consumer’s</em> relations with that professional.</td>
</tr>
<tr>
<td><strong>(4)</strong> An appropriate statutory status disclosure statement (GEN 4), a statement that the <em>firm</em> is on the FSA Register and its FSA registration number.</td>
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<tr>
<th>Information about the financial service</th>
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<tbody>
<tr>
<td><strong>(5)</strong> A description of the main characteristics of the service the <em>firm</em> will provide.</td>
</tr>
<tr>
<td><strong>(6)</strong> The total price to be paid by the <em>consumer</em> to the <em>firm</em> for the financial service, including all related fees, charges and expenses, and all taxes paid through the <em>firm</em> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <em>consumer</em> to verify it.</td>
</tr>
<tr>
<td><strong>(7)</strong> Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the <em>firm’s</em> control and that past performance is no indicator of future performance.</td>
</tr>
<tr>
<td><strong>(8)</strong> Notice of the possibility that other taxes or costs may exist that are not paid via the <em>firm</em> or imposed by it.</td>
</tr>
<tr>
<td><strong>(9)</strong> Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a <em>firm's</em> offer applies as it stands.</td>
</tr>
<tr>
<td><strong>(10)</strong> The arrangements for payment and performance.</td>
</tr>
<tr>
<td><strong>(11)</strong> Details of any specific additional cost to the <em>consumer</em> for using a means of distance communication.</td>
</tr>
</tbody>
</table>

Information about the contract
| (12)  | The existence or absence of a right to cancel or withdraw under the cancellation rules *(COBS* 15) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those *rules*, as well as the consequences of not exercising the right to cancel or withdraw. |
| (13)  | The minimum duration of the contract, in the case of services to be performed permanently or recurrently. |
| (14)  | Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases. |
| (15)  | Practical instructions for exercising any right to cancel or withdraw, including the address to which any cancellation or withdrawal notice should be sent. |
| (16)  | The *EEA State* or States whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the contract. |
| (17)  | Any contractual clause on the law applicable to the contract or on the competent court, or both. |
| (18)  | In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract. |

**Information about redress**

| (19)  | How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme. |
| (20)  | Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities. |

*[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]*
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<tbody>
<tr>
<td>(1)</td>
<td>The identity of the <em>person</em> in contact with the <em>consumer</em> and his link with the <em>firm</em>.</td>
</tr>
<tr>
<td>(2)</td>
<td>A description of the main characteristics of the financial service.</td>
</tr>
<tr>
<td>(3)</td>
<td>The total price to be paid by the <em>consumer</em> to the <em>firm</em> for the financial service including all taxes paid via the <em>firm</em> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <em>consumer</em> to verify it.</td>
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</tr>
<tr>
<td>(6)</td>
<td>That other information is available on request and what the nature of that information is.</td>
</tr>
</tbody>
</table>

[**Note:** article 3(3)(b) of the *Distance Marketing Directive*]
6 Information about the firm, its services and remuneration

6.1 Information about the firm and compensation information

Application

6.1.1 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 or equivalent third country business, a client.

(2) If expressly provided, this section also applies to ancillary services not covered by (1), but only in the course of MiFID or equivalent third country business carried on with or for a client.

6.1.2 R If a firm provides basic advice on stakeholder products in accordance with the basic advice rules, this section does not apply to that service.

6.1.3 G This section imposes requirements relating to disclosure of information to clients that are additional to the general requirement in COBS 2.2.

Information about a firm and its services

6.1.4 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) in the case of MiFID or equivalent third country business, 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 of the competent authority that has authorised it;

(5) in the case of MiFID or equivalent third country business, the contact address of the competent authority that has authorised the firm;

(6) 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;

(7) 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 rules on reporting to clients on the provision of services (COBS 16);

(8) (a) in the case of a common platform firm or a third country investment firm, a description, which may be provided in summary form, of the conflicts of interest policy;

(b) other than in the case of a common platform firm, when a material interest or conflict of interest may or does arise, the manner in which the firm will ensure fair treatment of the client;

(9) in the case of a common platform firm, 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]

6.1.5 G A firm disclosing details of its authorisation should refer to the appropriate forms of words set out in GEN 4 Ann 1R.

6.1.6 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: articles 30(2) and (3) of the MiFID implementing Directive]

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

6.1.7 R (1) A firm that holds designated investments or client money for a retail client subject to the MiFID custody chapter or the MiFID client money chapter and any third country investment firm that holds 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 an EEA State, an indication that the rights of the client relating to those instruments or money may differ accordingly;

(e) a summary description of the steps which it takes to ensure the protection of any designated investments belonging to the client or client money it holds, 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.
(2) A firm that holds designated investments or client money for a retail client must inform the client:

(a) if applicable, 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

(b) 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.

(3) A firm within (1) 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.

(4) A firm within (1) that holds client designated investments or client money for a professional client must provide that client with the information in paragraphs (1)(e) and (2)(a) and (b).

[Note: articles 29(3), 30(1)(g) and 32 of the MiFID implementing Directive]

6.1.8 G Paragraphs (1), (3) and (4) of COBS 6.1.7R apply in relation to MiFID or equivalent third country business and also to firms that have elected to comply with the custody rules in the MiFID custody chapter or the client money rules in the MiFID client money chapter.

Information about costs and associated charges

6.1.9 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 (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]

6.1.10 G The rules on inducements in COBS 2.3 may also require a firm to disclose information to a client in relation to benefits provided to the firm.

Timing of disclosure

6.1.11 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 (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), 29(3) and 29(5) of the MiFID implementing Directive]

6.1.12 G A firm should take into account COBS 8.1.3R(1), which requires earlier disclosure of some items of information covered in this section.

Medium of disclosure

6.1.13 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]
Keeping the client up to date

6.1.14 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]

Existing clients

6.1.15 G (1) A firm need not treat each of several transactions in respect of the same type of financial instrument as a new or different service and so does not need to comply with the disclosure rules in this chapter in relation to each transaction.

[Note: recital 50 to the MiFID implementing Directive]

(2) But a firm should ensure that the client has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.

Compensation information

6.1.16 R (1) A firm carrying on MiFID business must make available to a client, who has used or intends to use those services, information necessary for the identification of the compensation scheme or any other investor-compensation scheme of which the firm is a member (including, if relevant, membership through a branch) or any alternative arrangement provided for in accordance with the Investor Compensation Directive.

(2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the EEA State pursuant to article 2 (3) of the ICD.

(3) A firm must provide, on the client's request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

(4) The information provided for in this rule must be made available in a durable medium or via a website if the website conditions are satisfied in the official language or languages of the EEA State.

[Note: article 10(1) and (2) of the Investor Compensation Directive]
record keeping: information about the firm and compensation information

6.1.17 G Firms are reminded of the general record-keeping requirements in SYSC 3.2 and SYSC 9.
7 Insurance mediation

7.1 Application

7.1.1 R This chapter applies to a firm carrying on insurance mediation in relation to a life policy, but only if the State of the commitment is an EEA State.

[Note: articles 1 and 12 (4) and (5) of the Insurance Mediation Directive]

7.2 Information to be provided by the insurance intermediary

7.2.1 R (1) Prior to the conclusion of any initial life policy and, if necessary, on amendment or renewal, a firm must provide a client with at least the following information:

(a) its name and address;

(b) the fact that it is registered on the FSA register and its FSA register number (or, if it is not on the FSA register, the register in which it has been included and the means for verifying that it has been registered);

(c) whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given insurance undertaking (that is not a pure reinsurer);

(d) whether a given insurance undertaking (other than a pure reinsurer) or its parent undertaking has a direct or indirect holding representing more than 10% of the voting rights or capital in the firm; and

(e) the procedures which allow a client and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its clients.

(2) In addition, a firm must inform a client, concerning the life policy that is provided, whether:

(a) it gives advice on the basis of a fair analysis of the market; or

(b) it is contractually obliged to conduct its insurance mediation business exclusively with one or more insurance undertakings and, if that is the case, that the client can request the names of those insurance undertakings; or
it is not contractually obliged to conduct its *insurance mediation* business exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair analysis of the market and, if that is the case, that the *client* can request the names of the *insurance undertakings* with which the *firm* may and does conduct business.

(3) If a *client* asks a *firm* to provide the names of the *insurance undertakings* with which the *firm* conducts, or may conduct, business (*COBS* 7.2.1R (2)), the *firm* must provide it.

[Note: article 12(1) of the *Insurance Mediation Directive*]

7.2.2  
[intentionally blank]

Fair analysis for advised sales

7.2.3  
R When a *firm* informs a *client* that it gives advice on the basis of a fair analysis of the market, it must give that advice on the basis of an analysis of a sufficiently large number of *life policies* available on the market to enable the *firm* to make a recommendation, in accordance with professional criteria, regarding which *life policy* would be adequate to meet the *client's* needs.

[Note: article 12(2) of the *Insurance Mediation Directive*]

Specifying demands and needs

7.2.4  
R (1) Prior to the conclusion of any specific *life policy*, a *firm* must at least specify, in particular on the basis of the information provided by the *client*, the demands and needs of that *client*. Those demands and needs must be modulated according to the complexity of the relevant *policy*.

(2) This rule does not apply when a *firm* makes a *personal recommendation* in relation to a *life policy*.

[Note: article 12(3) of the *Insurance Mediation Directive*]

7.2.5  
G *Firms* are reminded that they are obliged to take reasonable steps to ensure that a *personal recommendation* is suitable for the *client* and that, whenever a *personal recommendation* relates to a *life policy*, a *suitability report* is required (*COBS* 9).

Means of communication to clients

7.2.6  
R All information to be provided to a *client* in accordance with the *rules* in this chapter must be communicated:

(1) in a *durable medium* available and accessible to the *client*;
(2) in a clear and accurate manner, comprehensible to the client; and

(3) in an official language of the State of the commitment or in any other language agreed by the parties.

[Note: article 13(1) of the Insurance Mediation Directive]

Additional requirement: telephone selling

7.2.7 R In the case of telephone selling, the prior information given to a client must be in accordance with the distance marketing disclosure rules (COBS 5.1). Moreover, information must be provided to the client in accordance with the means of communication to clients rule (COBS 7.2.6R) immediately after the conclusion of the life policy.

[Note: article 13(3) of the Insurance Mediation Directive]

Exceptions: client request or immediate cover

7.2.8 R The information referred to in the means of communication to clients rule (COBS 7.2.6R) may be provided orally where the client requests it, or where immediate cover is necessary. In those cases, the information must be provided to the client in accordance with that rule immediately after the conclusion of the life policy.

[Note: article 13(2) of the Insurance Mediation Directive]
8 Client agreements

8.1 Client agreements: designated investment business

Providing a client agreement

8.1.1 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 or equivalent third country business, a professional client.

(2) If expressly provided, this chapter also applies to a firm in relation to other ancillary services carried on for a client, but only in relation to its MiFID or equivalent third country business.

(3) But this chapter does not apply to a firm to the extent that it is effecting contracts of insurance in relation to a life policy issued or to be issued by the firm as principal.

8.1.2 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 other 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]

8.1.3 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 6.1.4R, 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 (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 (COBS 5.1.12R) 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

8.1.4 R (1) A firm must establish a record that includes the document or documents agreed between it and a client which 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; or

(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 the MiFID implementing Directive]

8.1.5 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]

8.1.6 G When considering its approach to client agreements, a firm should be aware of other obligations in the Handbook which may be relevant. These include the fair, clear and not misleading rule and the rules on disclosure of information to a client before providing services and the rules on distance communications (principally in COBS 2.2, 5, 6 and 13).
Suitability (including basic advice)

Application and purpose provisions

Making personal recommendations

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

Providing basic advice on a stakeholder product

9.1.2 R If a firm makes a personal recommendation in relation to a stakeholder product, other than in the course of MiFID or equivalent third country business, it may choose to give basic advice under the rules in section 9.6 of this chapter instead of the rules in the remainder of this chapter.

Managing investments

9.1.3 R This chapter applies to a firm which manages investments.

Business which is not MiFID or equivalent third country business

9.1.4 R In respect of the business of a firm which is not MiFID or equivalent third country business, this chapter applies only if:

(1) the client is a retail client; or

(2) the firm is managing the assets of an occupational pension scheme, stakeholder pension scheme or personal pension scheme.

Life policies for professional clients

9.1.5 R If the firm makes a personal recommendation to a professional client to take out a life policy, this chapter applies only those rules which implement the requirements of the Insurance Mediation Directive.

9.1.6 G If a rule implements a requirement of the Insurance Mediation Directive, a Note follows the rule indicating which provision is being implemented. COBS 7 (Insurance mediation) contains further rules implementing the Insurance Mediation Directive.

9.1.7 G The effect of these application rules and the fact that the Insurance Mediation Directive does not apply to an insurer (unless it is involved in mediation activities) is that this chapter does not apply to an insurer when it is making a personal recommendation to a professional client to take out a life policy.

Related rules

9.1.8 G For a firm making personal recommendations in relation to pensions, COBS 19 contains additional provisions relevant to assessing suitability and the
contents of suitability reports.

9.1.9 COBS 7 (Insurance mediation) contains requirements relating to the basis on which certain recommendations may be made, including requirements relating to fair analysis and range and scope.

9.2 Assessing suitability

Assessing suitability: the obligations

9.2.1 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]

9.2.2 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: articles 35(1), (3) and (4) of the MiFID implementing Directive]

9.2.3 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]

9.2.4 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]

9.2.5 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]

9.2.6 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]

9.2.7 G Although a firm may not be permitted to make a personal recommendation or take a decision to trade because it does not have the necessary information, its client may still ask the firm to provide another service such as, for example, to arrange a deal or to deal as agent for the client. If this happens, the firm should ensure that it receives written confirmation of the instructions. The firm should also bear in mind the clients’ best interests rule and any obligation it may have under the rules relating to appropriateness when providing the different service (see COBS 10, Appropriateness (for non-advised services)).

Professional clients (MiFID and equivalent third country business)
9.2.8  R  (1)  If a firm makes a personal recommendation or manages investments for a professional client in the course of MiFID or equivalent third country business, 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 9.2.2R(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 9.2.2R(1)(b).

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

Friendly society life policies

9.2.9  R  (1)  When recommending a small friendly society life policy, a firm, for the purpose of assessing suitability, need only obtain details of the net income and expenditure of the client and his dependants.

(2)  A friendly society life policy is small if the premium:

(a)  does not exceed £50 a year; or

(b)  if payable weekly, £1 a week.

(3)  The firm must keep for five years a record of the reasons why the recommendation is considered suitable.

9.3  Guidance on assessing suitability

9.3.1  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

9.3.2  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)  A firm should have regard to the client's agreed investment strategy in determining the frequency of transactions. This would include, for example, the need to switch a client within or between packaged
products.

[Note: recital 57 to the MiFID implementing Directive]

Income withdrawals and short-term annuities

9.3.3 G When a firm is making a personal recommendation to a retail client about income withdrawals or purchase of short-term annuities, it should consider all the relevant circumstances including:

(1) the client’s investment objectives, need for tax-free cash and state of health;

(2) current and future income requirements, existing pension assets and the relative importance of the plan, given the client’s financial circumstances;

(3) the client’s attitude to risk, ensuring that any discrepancy is clearly explained between his attitude to an income withdrawal or purchase of a short-term annuity and other investments.

Loans and mortgages

9.3.4 G When considering the suitability of a particular investment product which is linked directly or indirectly to any form of loan, mortgage or home reversion plan, a firm should take account of the suitability of the overall transaction. The firm should also have regard to any applicable suitability rules in MCOB.

9.4 Suitability reports

[intentionally blank]

9.5 Record keeping and retention periods for suitability records

9.5.1 G For its MiFID business, a firm is required to keep orderly records of its business and internal organisation (see SYSC 9, General rules on record-keeping). For other business, a firm is required to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (see SYSC 3, Systems and controls). The records may be expected to reflect the different effect of the rules in this chapter depending on whether the client is a retail client or a professional client: for example, in respect of the information about the client which the firm must obtain and whether the firm is required to provide a suitability report.

9.5.2 R The firm must retain its records relating to suitability for a minimum of the following periods:

(1) if relating to a pension transfer, pension opt-out or FSAVC,
indefinitely;

(2) if relating to a life policy, pension contract or stakeholder pension scheme, five years;

(3) if relating to MiFID or equivalent third country business, five years; and

(4) in any other case, three years.

9.5.3 R A firm need not retain its records relating to suitability if:

(1) the client does not proceed with the recommendation; and

(2) they do not relate to MiFID or equivalent third country business.

9.6 Special rules for providing basic advice on a stakeholder product

9.6.1 G When a firm gives basic advice, it may choose to comply with the rules in this section instead of the other rules in this chapter (COBS 9.1.2R).

Requirements on first contact

9.6.2 R If a firm’s first contact with a retail client is not face to face, it must tell the client at the outset:

(1) (if the communication is initiated by or on behalf of a firm), the name of the firm and the commercial purpose of the communication;

(2) [intentionally blank]

(3) that the firm will provide the retail client with basic advice without carrying out a full assessment of the retail client’s needs and circumstances; and

(4) that such information will be confirmed in writing.

Sales process

9.6.3 R When a firm gives basic advice to a retail client, it must do so using a sales process that includes putting pre-scripted questions to the client.

9.6.4 R When a firm gives basic advice to a retail client it must not:

(1) describe or recommend a smoothed linked long term stakeholder product; or

(2) describe fund choice, or recommend a particular fund, if a stakeholder product offers a choice of funds; or
recommend the level of contributions required to be made to a stakeholder pension scheme to achieve a specific income in retirement; or

(4) recommend or agree that a client makes a contribution to an ISA which exceeds the HM Revenue & Customs ISA limits.

9.6.5 R (1) If a firm starts the sales process for a stakeholder product that is not a deposit-based stakeholder product, it must not depart from that process unless it has advised the retail client that it will not provide basic advice on stakeholder products during the period of departure. A firm that does that must not provide basic advice during the departure period.

(2) Before a firm returns to the sales process for stakeholder products, it must tell the retail client that that process is about to recommence.

Suitability

9.6.6 R A firm must only recommend a stakeholder product to a retail client if:

(1) it has taken reasonable steps to assess the client's answers to the scripted questions and any other facts, circumstances or information disclosed by the client during the sales process;

(2) (unless the relevant product is a deposit-based stakeholder product) having done so, it has reasonable grounds for believing that the stakeholder product is suitable for the client; and

(3) the firm reasonably believes that the client understands the firm’s advice and the basis on which it was provided.

9.6.7 G The Annex to this chapter gives guidance on the steps a firm could take to help it meet these suitability obligations.

9.6.8 R (1) If a firm advises a retail client to acquire a stakeholder product, it must ensure that, prior to the conclusion of the contract, its representative:

(a) (unless the relevant product is a deposit-based stakeholder product) explains to the client, if necessary in summary form, but always in a way that will allow the client to make an informed decision about the firm’s recommendation:

(i) the nature of the stakeholder product; and

(ii) the "aims", "commitment" and "risks" sections of the appropriate key features document;

(b) provides the client with a summary sheet, which is in a durable medium and sets out, for each product it recommends:
(i) the specific amount the client wishes to pay into the product; and

(ii) the reasons for the recommendation, including the client’s attitude to risk and any information provided by the client on which the recommendation is based; and

(c) informs the client that in determining any subsequent complaint, the Ombudsman may take into account the limited information on which the recommendation was based and the fact that it was not tailored to take account of those aspects of the client’s financial needs and circumstances not covered by the firm’s sales process.

(2) Notwithstanding (1)(b), a firm may provide the summary sheet (COBS 9.6.8R(1)(b)) as soon as reasonably practicable after the conclusion of the contract if the client asks it to do so, or the contract will be concluded using a means of distance communication that does not enable the provision of the summary sheet in a durable medium prior to the conclusion of the contract, but only if the firm:

(a) reads the summary sheet to the client before it concludes the contract; and

(b) sends the summary sheet to the client as soon as practicable after the conclusion of the contract.

Concluding the contract

9.6.9 R If a firm concludes a contract for a stakeholder product with or for a retail client it must provide a copy of the completed questions and answers to the client in a durable medium as soon as reasonably practicable afterwards.

Basic advice on stakeholder products: other issues

9.6.10 R A firm must ensure that none of its representatives:

(1) is likely to be influenced by the structure of his or her remuneration to give unsuitable basic advice on stakeholder products to a retail client; or

(2) refers a retail client to another firm in circumstances which would amount to the provision of any fee, commission or non-monetary benefit.

Records

9.6.11 R A firm must record that it has chosen to give basic advice to a retail client and that record must be retained for at least five years from the date of the relevant basic advice.
This Annex gives guidance on the standards and requirements to which a firm may have regard in designing a sales process for stakeholder products and assumes that firms will provide basic advice to retail clients who have no practical knowledge of investing in stakeholder products or investments.

General Standards – all sales

1. A sales process for stakeholder products may allow the representative administering it to depart from scripted questions where this is desirable to enable the retail client to better understand the points that need to be made provided this is compatible with the representative's competence and the degree of support offered by the firm's software and other systems. A software-based system is more likely to provide an adaptable means of providing prompts and support for representatives which may accordingly support a more flexible sales process.

2. Questions, statements and warnings provided should be short, simple and in plain language. Questions should address one issue at a time.

3. The sales process should enable the retail client to exit freely and without pressure at any stage. It should also allow the representative to terminate the process at any stage if it appears unlikely (for affordability, mis-match, risk or other reasons) that there is a suitable product for the retail client.

4. Where necessary the sales process should incorporate procedures to allow uncertainties in the retail client's answers to be addressed before proceeding and should generally reflect caution about proceeding if clarification or further information cannot be obtained during the process (for example if a retail client cannot confirm whether he or she is eligible for membership of an occupational pension scheme).

Preliminary - all sales

5. The retail client should be given the following preliminary information:

(a) the retail client will only be given basic advice about stakeholder products;

(b) stakeholder products are intended to provide a relatively simple and low-cost way of investing and saving;

(c) [intentionally blank]

(d) the retail client will be asked a series of questions about his or her needs and circumstances and, at the end of the procedure, he or she may be recommended to acquire a stakeholder product;
(e) the assessment of whether a *stakeholder product* is suitable will be made without a detailed assessment of the *retail client's* needs but will be based only on the information disclosed during the questioning process; and

(f) the *retail client's* answers will be noted and, at the end of the process, if a recommendation to acquire a *stakeholder product* is made, the *retail client* will be provided with a copy of the completed questionnaire.

6. Following 5, the *retail client* should be asked if he or she wishes to proceed and, if not, the sales process should cease.

**Affordability - all sales**

7. If it appears that the *retail client* is unlikely to be able to afford a *stakeholder product*, the sale should be terminated and the *retail client* given an explanation together with a copy of the questions and answers completed to that point.

**Financial Priorities and Debt - all sales**

8. A *retail client* should be assessed to ascertain other possible financial priorities - for example, does the *retail client* need (a) insurance protection; (b) access to liquid cash to meet an emergency; or (c) to reduce existing debts? If appropriate, the *retail client* should be given an unambiguous warning about the desirability of meeting those priorities before acquiring a *stakeholder product*.

9. A stronger warning about the desirability of addressing debt as a priority should be given if it appears that the *retail client* is significantly indebted, especially if there is a strong indication that the debt commitments may render any new commitment unaffordable in the short-term. For this purpose a *firm* should consider using a threshold or indicator to decide whether a *retail client* should be excluded on the basis of affordability. Examples may include where the *retail client* has (a) annual unsecured debt repayments in excess of 20% of gross annual income or (b) four or more active forms of unsecured debt or (c) has consistently reached his overdraft limit. A *firm* should review its chosen indicator or threshold regularly to ensure that it reflects prevailing economic conditions and takes account of industry best practice.

10. A *firm* should clearly explain what it needs to know about a *retail client's* debt and consider using a range of alternative words (eg 'loans', 'student loans', 'borrowing' and 'other forms of credit') to ensure all relevant information is obtained. A *firm* may use a simple reckoner to assess *retail client* debt, but should be conscious of the nature of, and not give the impression that it is providing more than, *basic advice*.

11. If a *firm* gives a warning about the desirability of meeting other priorities
before acquiring a stakeholder product, or about affordability, it should also invite the retail client to consider terminating the sales process.

Saving and investment objectives - all sales (except establishing a stakeholder CTF)

12. A retail client's savings and investment objectives, including the period over which the retail client wishes to save or invest, should be ascertained including whether the retail client:

(a) may need early access to some or all of the amount saved or invested;
(b) wishes to save or invest for retirement; or
(c) wants to accumulate a specific sum by a specific date.

13. If that information indicates that the retail client's objective is:

(a) to accumulate a specific sum by a specific date;
(b) to save or invest only for the short term; or
(c) early access may be required to the whole of the sum saved or invested;

the firm should not normally recommend a CIS stakeholder product, a linked life stakeholder product, a stakeholder pension scheme or topping up of a stakeholder CTF.

Tolerance of risk - all sales

14. If a retail client is not willing to accept any risk of the capital value of an investment being reduced then CIS stakeholder products, linked life stakeholder products and stakeholder CTFs should not usually be recommended. However, a firm may, if appropriate, explain the effect of inflation on long-term savings especially in relation to pensions and invite the retail client to consider his attitude to risk in the light of that explanation.

15. If a retail client is willing to accept the risk of capital reduction in some circumstances but not others then, before any recommendation to acquire a CIS stakeholder product or linked life stakeholder product is made, the retail client should be reminded of the other circumstances in which he or she is unwilling to accept risk to capital.

Stakeholder pensions

16. A stakeholder pension scheme should not be recommended, and the retail client should be advised to seek alternative or further advice, if it appears that the retail client:
(a) has or will have access to an *occupational pension scheme*; or
(b) is likely to view income in retirement from state benefits as sufficient; or
(c) already has a pension to which he or she could make further contributions; or
(d) wishes to retire within five years.

17. It may also be appropriate to advise the *retail client* that other courses of action may be more beneficial than buying a *stakeholder pension scheme* (for example joining an *occupational pension scheme*).

18. A *firm* designing a sales process for use in the workplace may take account of the benefits offered by the employer. If a firm recommends a *stakeholder pension scheme* on the basis of benefits provided by an employer, then it should explain the basis of the recommendation to the *retail client* and suggest that the *retail client* seek advice if he or she has any concerns.

19. A *firm* should design its processes with a view to addressing the risk that retail clients will fail to appreciate the significance of questions about their pension provision and should accordingly incorporate a range of questions and information designed to foster the retail client's understanding of the issues and to elicit appropriate information.

20. *Retail clients* should be told that a *stakeholder pension scheme* is lifestyle and what this means.

21. [intentionally blank]

**ISAs**

22. A *firm* should ascertain whether the retail client has already opened a mini or maxi *ISA* and, if so, whether it would be appropriate for the retail client to open a non-ISA version of the same product.
10 Appropriateness (for non-advised services)

10.1 Application and purpose provisions

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

10.1.2 R This chapter applies to a firm which arranges or deals in relation to a derivative or a warrant with or for a retail client and the firm is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion.

10.1.3 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).

Related rules

10.1.4 G A firm that is carrying on a regulated activity on a non-advised basis, whether or not the rules in this chapter apply to its activities, should also consider whether other rules in COBS apply. For example, a firm carrying on insurance mediation activity in relation to a life policy that does not involve the provision of advice, should have regard to COBS 7 (Insurance mediation).

10.2 Assessing appropriateness: the obligations

10.2.1 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.
10.2.2 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]

10.2.3 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]

10.2.4 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]

10.2.5 G When assessing appropriateness, a firm may use information it already has in its possession.

10.2.6 G Depending on the circumstances, a firm may be satisfied that the client’s knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a firm may infer knowledge from experience.

10.2.7 G If, before assessing appropriateness, a firm seeks to increase the client’s level of understanding of a service or product by providing information to him, relevant considerations are likely to include the nature and complexity of the information and the client’s existing level of understanding.

10.2.8 G If a firm is satisfied that the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the client. If the firm does so, it must not do so in a way that amounts to making a personal recommendation unless it complies with the rules in COBS 9 on suitability.
10.3 Warning the client

10.3.1 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]

10.3.2 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]

10.3.3 G If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the circumstances.

10.4 Assessing appropriateness: when it need not be done

10.4.1 R (1) A firm is not required to ask its client to provide information or assess appropriateness if:

(a) the service only consists of execution and/or the reception and transmission of client orders, with or without ancillary services, it relates to particular financial instruments and is provided at the initiative of the client;

(b) 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

(c) 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]

10.4.2 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]

10.4.3 R A client 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.

[Note: recital 59 of the MiFID implementing Directive]
10.5 Assessing appropriateness: guidance

The initiative of the client

10.5.1 A service should be considered to be provided at the initiative of a client (see COBS 10.4.1R(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]

10.5.2 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]

Personalised communications

10.5.3 (1) Communications to the world at large, such as those in newspapers or on billboards, are likely to be by their very nature general and therefore not personalised communications.

(2) Communications addressed to a client (such as, for example, an email, a telephone call or a letter), may or may not be personalised depending on the content.

(3) A communication is not personalised solely because it contains the name and address of the client or because a mailing list has been filtered.

(4) If a firm is satisfied that a communication does not contain any personalised content, it may wish to make clear that it does not intend the communication to be personalised and that the personal circumstances of the recipient have not been taken into account.

Equivalent third country markets

10.5.4 [to insert the reference or hypertext link to the list of equivalent third country markets when available]

[Note: article 19(6) of MiFID]

Independent valuation systems

10.5.5 The circumstances in which valuation systems will be independent of the issuer (see COBS 10.4.1R(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]

10.6 When a firm need not assess appropriateness

10.6.1 G A firm need not assess appropriateness if it is receiving or transmitting an order in relation to which it has assessed suitability under COBS 9 (Suitability (including basic advice)).

10.6.2 G A firm may not need to assess appropriateness if it is able to rely on a recommendation made by an investment firm (see COBS 2.4.5G (Reliance on other investment firms: MiFID and equivalent business)).

10.7 Record keeping and retention periods for appropriateness records

10.7.1 G For its MiFID business, a firm is required to keep orderly records of its business and internal organisation (see SYSC 9, General rules on record-keeping). For other business, a firm is required to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (see SYSC 3, Systems and controls). The records may be expected to include the client information a firm obtains to assess appropriateness and should be adequate to indicate what the assessment was.

10.7.2 R The firm must retain its records relating to appropriateness for a minimum of five years.
11 Dealing and managing

11.1 Application

General application

11.1.1 R This chapter, other than the section on personal account dealing (COBS 11.7), applies in relation to:

(1) MiFID business carried on by a MiFID investment firm; and

(2) equivalent business of a third country investment firm.

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

11.1.3 [intentionally blank]

Application of section on personal account dealing

11.1.4 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.

11.1.5 G The EEA territorial scope rule modifies the default territorial scope of the section on personal account dealing (see COBS 11.7) to the extent necessary to be compatible with European law (see paragraph 1.1R of Part 3 of COBS 1 Ann 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.

11.2 Best execution

Obligation to execute orders on terms most favourable to the client

11.2.1 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]

11.2.2 G The obligation to take all reasonable steps to obtain the best possible result for its clients (see COBS 11.2.1R) should apply to a firm which owes contractual or agency obligations to the client.

[Note: recital 33 to MiFID]

11.2.3 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]

11.2.4 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]

11.2.5 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

11.2.6 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
11.2.7 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]

11.2.8 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]

11.2.9 G A firm's execution policy should determine the relative importance of each of the execution factors or establish a process by which the firm will determine the relative importance of the execution factors. The relative importance that the firm gives to those execution factors must be designed to obtain the best possible result for the execution of its client orders. Ordinarily, the FSA would expect that price will merit a high relative importance in obtaining the best possible result for professional clients. However, in some circumstances for some clients, orders, financial instruments or markets, the policy may appropriately determine that other execution factors are more important than price in obtaining the best possible execution result.

Delivering best execution where there are competing execution venues

11.2.10 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]

11.2.11 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]

11.2.12 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]

11.2.13 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 order execution arrangements including an order execution policy

11.2.14 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]

11.2.15 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]

11.2.16 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]

11.2.17 G The provisions of this section which 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]

11.2.18 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

11.2.19 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]

11.2.20 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]

11.2.21 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

11.2.22 R A firm must provide appropriate information to its clients on its order execution policy.

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

11.2.23 R (1) 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:

   (a) 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;

   (b) 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;

   (c) 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.

(2) This 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]

11.2.24 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

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

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

A firm must monitor the effectiveness of its 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

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

This 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

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 in clients' best interests

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]

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
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(2) of the MiFID implementing Directive]

11.2.32 R

(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 11.2.7R).

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 an 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 COBS 11.2.32R(2);

[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. This 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

11.2.33 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

11.2.34 R The provisions applying to a firm which places orders with, or transmits orders to, other entities for execution (see COBS 11.2.30R to COBS 11.2.33G) will not apply when the firm which 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 11.2.1R to COBS 11.2.29R).

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

11.3 Client order handling

General principles

11.3.1 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 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 orders in accordance with the time of their reception by the firm.

Note: paragraph 2 of article 22(1) of MiFID

11.3.2 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 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; and

(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]

11.3.3 G For the purposes of the provisions of this section, 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]

11.3.4 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]

11.3.5 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]

11.3.6 G Without prejudice to the Market Abuse Directive, for the purposes of the rule on the misuse of information (see COBS 11.3.5R), 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

11.3.7 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;
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;

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]

11.3.8 R If a firm aggregates a client order with one or more other 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

11.3.9 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]

11.3.10 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]

11.3.11 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]

11.3.12 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 person.

[Note: recital 77 to the MiFID implementing Directive]

11.3.13 G In this section, carrying out client orders includes:

1. the execution of orders on behalf of clients;
2. the placing of orders with other entities for execution that result from decisions to deal in financial instruments on behalf of clients when providing the service of portfolio management;
3. the transmission of client orders to other entities for execution when providing the service of reception and transmission of orders.

**11.4 Client limit orders**

Obligation to make unexecuted client limit orders public

11.4.1 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 is 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]

11.4.2 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

11.4.3 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]

11.4.4 G MAR 5.8.2EU sets out the conditions required for an arrangement to make the order public under this section.

Orders that are large in scale
11.4.5 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]

11.4.6 G  MAR 5.7.10EU and MAR 5.7.11EU set out when an order shall be considered large in scale compared with normal market size.

11.5 Record keeping: client orders and transactions

Record keeping of client orders and decisions to deal

11.5.1 EU An investment firm shall, in relation to every order received from a client, and in relation to every decision to deal taken in providing the service of portfolio management, immediately make a record of the following details, to the extent they are applicable to the order or decision to deal in question:

(1) the name or other designation of the client;
(2) the name or other designation of any relevant person acting on behalf of the client;
(3) the details specified in point 4, 6, and in points 16 to 19, of Table 1 of Annex I;
(4) the nature of the order if other than buy or sell;
(5) the type of the order;
(6) any other details, conditions and particular instructions from the client that specify how the order must be carried out;
(7) the date and exact time of the receipt of the order, or of the decision to deal, by the investment firm.

[Note: article 7 of MiFID Regulation]

Record-keeping of transactions

11.5.2 EU Immediately after executing a client order, or, in the case of investment firms that transmit orders to another person for execution, immediately after receiving confirmation that an order has been executed, investment firms shall record the following details of the transaction in question:

(1) the name or other designation of the client;
(2) the details specified in points 2, 3, 4, 6, and in points 16 to 21, of Table 1 of Annex I;
(3) the total price, being the product of the unit price and the quantity;
(4) the nature of the transaction if other than buy or sell;

(5) the natural person who executed the transaction or who is responsible for the execution.

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

11.5.3 EU If an investment firm transmits an order to another person for execution, the investment firm shall immediately record the following details after making the transmission:

(1) the name or other designation of the client whose order has been transmitted;

(2) the name or other designation of the person to whom the order was transmitted;

(3) the terms of the order transmitted;

(4) the date and exact time of transmission.

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

11.5.4 EU Points 2, 3, 4, 6, 16 – 21 of Table 1 of Annex 1 of the MiFID Regulation

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Trading day</td>
<td>The trading day on which the transaction was executed.</td>
</tr>
<tr>
<td>3.</td>
<td>Trading time</td>
<td>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 Coordinated Universal Time (UTC) +/- hours.</td>
</tr>
<tr>
<td>4.</td>
<td>Buy/sell indicator</td>
<td>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 client, of the client.</td>
</tr>
<tr>
<td>6.</td>
<td>Instrument identification</td>
<td>This shall consist of:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- a unique code to be decided by the competent authority (if any) to which the report is made identifying the financial instrument which is the subject of the transaction;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- if the financial instrument 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.</td>
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<tr>
<td>16.</td>
<td>Unit price</td>
<td>The price per security or derivative contract excluding commission and (where relevant) accrued interest. In</td>
</tr>
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<td></td>
<td></td>
</tr>
<tr>
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</tr>
<tr>
<td>17. Price notation</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>18. Quantity</td>
<td>The number of units of the financial instruments, the nominal value of bonds, or the number of derivative contracts included in the transaction.</td>
<td></td>
</tr>
<tr>
<td>19. Quantity notation</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>20. Counterparty</td>
<td>Identification of the counterparty to the transaction. That identification shall consist of:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- where the counterparty is an investment firm, a unique code for that firm, to be determined by the competent authority (if any) to which the report is made;</td>
<td></td>
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<tr>
<td></td>
<td>- where the counterparty is a regulated market or MTF or an entity acting as its central counterparty, the unique harmonised identification code for that market, MTF 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);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- where the counterparty is not an investment firm, a regulated market, an MTF or an entity acting as central counterparty, it should be identified as ‘customer/client’ of the investment firm which executed the transaction.</td>
<td></td>
</tr>
<tr>
<td>21. Venue identification</td>
<td>Identification of the venue where the transaction was executed. That identification shall consist in:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- where the venue is a trading venue: its unique harmonised identification code;</td>
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<tr>
<td></td>
<td>- otherwise: the code ‘OTC’.</td>
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11.6 [intentionally blank]
11.7 Personal account dealing

Rule on personal account dealing

11.7.1 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 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]

11.7.2 R For the purposes of this section, the relevant provisions are:

(1) the rules on personal transactions undertaken by financial analysts in
COBS 12.2.5R(1) and (2);

(2) the rule on the misuse of information relating to pending client orders in COBS 11.3.5R.

11.7.2 G The requirements of this section are without prejudice to article 3(a) of the Market Abuse Directive which prohibits any person who possesses inside information under article 2 of that directive from disclosing that information to any other person unless that disclosure is made in the normal course of the exercise of his employment, profession or duties.

11.7.3 G For the purposes of COBS 11.7.1 R(1)(c), any other obligation of the firm under MiFID refers to a firm's obligations under the regulatory system that are not owed to a customer and any of the firm's obligations under another EEA States' implementation of MiFID where it operates a branch in the EEA.

11.7.4 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]

Disapplication of rule on personal account dealing

11.7.5 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]

11.7.6 R For the purposes of this section, a person who is not:

(1) a director, partner or equivalent, manager or appointed representative (or, where applicable, a tied agent) of the firm; or

(2) a director, partner or equivalent, or manager of any appointed representative (or where applicable, a tied agent) of the firm;

will only be a relevant person to the extent that they are involved in the provision of designated investment business.

Successive personal transactions

11.7.7 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]
12 Investment research

12.1 Purpose and application

Purpose

12.1.1 The purpose of this chapter is to implement the provisions of:

(1) MiFID relating to the production and dissemination of investment research and non-independent research; and

(2) the Market Abuse Directive relating to the disclosures to be made in, and about, research recommendations.

Application: Who?

12.1.2 This chapter applies in relation to:

(1) MiFID business carried on by a MiFID investment firm; and

(2) COBS 12.4 applies to all firms.

Application: Where?

12.1.3 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 2 of COBS 1 App 1). This means that COBS 12.2 and COBS 12.3.4G also apply to passported activities carried on by a UK MiFID investment firm from a branch in another EEA state, but do not apply to the United Kingdom branch of an EEA MiFID investment firm in relation to its MiFID business.

12.2 Investment research

Application

12.2.1 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]

12.2.2 The concept of dissemination of investment research to clients or to the public is not intended to include dissemination exclusively to persons within the group of the firm.

[Note: recital 33 of the MiFID implementing Directive]
Measures and arrangements required for investment research

12.2.3 R A firm must ensure the implementation of all of the measures for managing conflicts of interest in SYSC 10.1.11R 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]

12.2.4 G Persons whose responsibilities or business interests may reasonably be considered to conflict with the interests of the persons to whom investment research is disseminated include corporate finance personnel and persons involved in sales and trading on behalf of clients or the firm.

[Note: recital 30 of the MiFID implementing Directive]

12.2.5 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 as market maker acting in good faith and in the ordinary course of market making or 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]

12.2.5A G Firms are reminded that they must also comply with COBS 11.7 (Rule on personal account dealing).

12.2.6 G Knowledge by a financial analyst or other relevant person that the firm intends to produce or disseminate investment research to its clients or to the public (including in circumstances where research material has not yet been written) could constitute knowledge of the likely timing and content of investment research under COBS 12.2.5R(1).

12.2.7 G For the purposes of COBS 12.2.5R(2):

(1) current recommendations should be considered to be those recommendations contained in investment research which have not been withdrawn and which have not lapsed; and

[Note: recital 34 of the MiFID implementing Directive]

(2) exceptional circumstances in which financial analysts and other relevant persons may, with prior written approval, undertake personal transactions in financial instruments to which investment research relates should include those circumstances where, for personal reasons relating to financial hardship, the financial analyst or other relevant person is required to liquidate a position.

[Note: recital 31 of the MiFID implementing Directive]

12.2.8 G Small gifts or minor hospitality below a level specified in the firm's conflicts of interest policy and mentioned in the description of that policy that is made available to clients in accordance with COBS 6.1.4R(8) should not be considered as inducements for the purposes of COBS 12.2.5R(3).

[Note: recital 32 of the MiFID implementing Directive]

12.2.9 G A financial analyst should not become involved in activities other than the
preparation of investment research where such involvement is inconsistent with the maintenance of the financial analyst's objectivity. The following should ordinarily be considered as inconsistent with the maintenance of a financial analyst's objectivity:

(1) participating in investment banking activities such as corporate finance business and underwriting; or

(2) participating in 'pitches' for new business or 'road shows' for new issues of financial instruments; or

(3) being otherwise involved in the preparation of issuer marketing.

[Note: recital 36 of the MiFID implementing Directive]

Exemption from investment research measures and arrangements

12.2.10 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 12.2.3R and COBS 12.2.5R 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 12.2.3R and COBS 12.2.5R 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]

Means and timing of publication of investment research

12.2.11 G The FSA would expect a firm's conflicts of interest policy to provide for investment research to be published or distributed to its clients in an appropriate manner. For example, the FSA considers it will be:

(1) appropriate for a firm to take reasonable steps to ensure that its investment research is published or distributed only through its usual distribution channels; and

(2) inappropriate for an employee (whether or not a financial analyst) to communicate the substance of any investment research, except as set out in the firm's conflicts of interest policy.

12.2.12 G The FSA would expect a firm to consider whether or not other business
activities of the firm could create the reasonable perception that its investment research may not be an impartial analysis of the market in, or the value or prospects of, a financial instrument. A firm would therefore be expected to consider whether its conflicts of interest policy should contain any restrictions on the timing of the publication of investment research. For example, a firm might consider whether it should restrict publication of relevant investment research around the time of an investment offering.

Investment research for internal use

12.2.13 G The FSA considers that the significant conflicts of interest which could arise are likely to mean it is inappropriate for a financial analyst or other relevant person to prepare investment research which is intended firstly for internal use for the firm’s own advantage, and then for later publication to its clients (in circumstances in which it might reasonably be expected to have a material influence on its clients’ investment decisions).

12.3 Non-independent research

Application

12.3.1 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

12.3.2 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]

12.3.3 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]
Management of conflicts of interest in area of non-independent research

12.3.4 G In accordance with SYSC 10, a firm will be expected to take reasonable steps to identify and manage conflicts of interest which may arise in the production of non-independent research. Situations where conflicts of interest can arise include:

(1) relevant persons trading in financial instruments that are the subject of non-independent research which they know the firm has published or intends to publish before clients have had a reasonable opportunity to act on it (other than when the firm is acting as market maker in good faith and in the ordinary course of market making, or in the execution of an unsolicited client order); and

(2) preparation of non-independent research which is intended firstly for internal use by the firm and then for later publication to clients.

12.4 Research recommendations: required disclosures

Application

12.4.1 R (1) This section applies to a firm that prepares or disseminates research recommendations.

(2) This section does not apply to the extent that the Investment Recommendation (Media) Regulations 2005 apply to a firm.

(3) If a firm is a media firm subject to equivalent appropriate regulation, only COBS 12.4.2G, COBS 12.4.4R, COBS 12.4.15R and COBS 12.4.16R apply.

[Note: articles 2(4), 3(4), 5(5) of the MAD Investment Recommendations Directive]

12.4.2 G Appropriate regulatory or self-regulatory arrangements are sufficient to meet the condition in COBS 12.4.1R(3). Examples include those listed in regulation 3(5) of the Investment Recommendation (Media) Regulations 2005, that is the Code of Practice issued by the Press Complaints Commission, the Producers' Guidelines issued by the British Broadcasting Corporation, and any code published by the Office of Communications pursuant to section 324 of the Communications Act 2003.

Use of information barriers

12.4.3 G Obligations to disclose information do not require those producing research recommendations to breach effective information barriers put in place to prevent and avoid conflicts of interest.

[Note: recital 7 of the MAD Investment Recommendations Directive]
Fair presentation and disclosure

12.4.4 R A firm must take reasonable care:

(1) to ensure that a research recommendation produced or disseminated by it is fairly presented; and

(2) to disclose its interests or indicate conflicts of interest concerning relevant investments.

[Note: article 6(5) of the Market Abuse Directive]

Identity of producers of recommendations

12.4.5 R (1) A firm must, in a research recommendation produced by it:

(a) disclose clearly and prominently the identity of the person responsible for its production, and in particular:

(i) the name and job title of the individual who prepared the research recommendation; and

(ii) the name of the firm; and

(b) (where the firm is an investment firm or a credit institution) disclose the identity of the competent authority of the firm.

(2) The requirements in (1) may be met for non-written research recommendations by referring to a place where the disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the firm.

[Note: article 2 of the MAD Investment Recommendations Directive]

General standard for fair presentation of recommendations

12.4.6 R (1) A firm must take reasonable care to ensure that:

(a) facts in a research recommendation are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;

(b) its sources for a research recommendation are reliable or if there is any doubt as to whether a source is reliable, this is clearly indicated;

(c) all projections, forecasts and price targets in a research recommendation are clearly labelled as such and the material assumptions made in producing or using them are indicated; and

(d) the substance of its research recommendations can be substantiated as reasonable, upon request by the FSA.
(2) The requirements in (1) do not apply, in the case of non-written research recommendations, to the extent that they would be disproportionate.

(3) A firm must make and retain sufficient records to disclose the basis of the substantiation required in (1)(d).

[Note: article 3 of the MAD Investment Recommendations Directive]

Additional obligations in relation to fair presentation of recommendations

12.4.7 R (1) In addition a firm must take reasonable care to ensure that, in a research recommendation, at least:

(a) all substantially material sources are indicated, including, if appropriate, the issuer, and in particular the research recommendation indicates whether the research recommendation has been disclosed to that issuer and amended following this disclosure before its dissemination;

(b) any basis of valuation or methodology used to evaluate a security, a derivative or an issuer, or to set a price target for a security or a derivative, is adequately summarised;

(c) the meaning of any recommendation made, such as "buy", "sell" or "hold", which may include the time horizon of the security or derivative to which the research recommendation relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;

(d) reference is made to the planned frequency, if any, of updates of the research recommendation and to any major changes in the coverage policy previously announced;

(e) the date at which the research recommendation was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any security or derivative price mentioned; and

(f) if the substance of a research recommendation differs from the substance of an earlier research recommendation, concerning the same security, derivative or issuer issued during the 12-month period immediately preceding its release, this change and the date of the earlier research recommendation are indicated clearly and prominently.

(2) If the requirements in (1)(a), (b) or (c) would be disproportionate in relation to the length of the research recommendation, a firm may, instead, make clear and prominent reference in the research recommendation to the place where the required information can be directly and easily accessed by the public (such as a hyperlink to that
information on an appropriate internet site of the firm) provided that there has been no change in the methodology or basis of valuation used.

(3) In the case of a non-written research recommendation, the requirements of (1) do not apply to the extent that they would be disproportionate.

[Note: article 4 of the MAD Investment Recommendations Directive]

12.4.8 G The disclosures required under COBS 12.4.7R(1)(e) and (f) may, if the firm so chooses, be made by graphical means (for example by use of a line graph).

General standard for disclosure of interests and conflicts of interest

12.4.9 R (1) A firm must disclose, in a research recommendation:

(a) all of its relationships and circumstances that may reasonably be expected to impair the objectivity of the research recommendation, in particular a significant financial interest in any relevant investment which is the subject of the research recommendation, or a significant conflict of interest with respect to a relevant issuer; and

(b) relationships and circumstances, of the sort referred to in (a), of each legal or natural person working for the firm who was involved in preparing the substance of the research recommendation, including, in particular, for a firm which is an investment firm, disclosure of whether his remuneration is tied to investment banking transactions performed by the firm or any affiliated company.

(2) If the firm is a legal person, the information to be disclosed in accordance with (1) must at least include the following:

(a) any interests or conflicts of interest of the firm or of an affiliated company that are accessible, or reasonably expected to be accessible, to the persons involved in the preparation of the substance of the research recommendation; and

(b) any interests or conflicts of interest of the firm or of affiliated companies known to persons who, although not involved in the preparation of the substance of the research recommendation, had or could reasonably be expected to have access to the substance of the research recommendation prior to its dissemination, other than persons whose only access to the research recommendation is to ensure compliance with relevant regulatory or statutory obligations, including the disclosures required under this section.

(3) If the disclosures required under (1) and (2) would be disproportionate in relation to the length of the research recommendation distributed, a firm may, instead, make clear and prominent reference in the research recommendation to the place where such disclosures can be directly and
easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the firm).

(4) The requirements in (1) do not apply, in the case of non-written research recommendations, to the extent that they are disproportionate.

[Note: article 5 of the MAD Investment Recommendations Directive]

Additional obligations for producers of research recommendations in relation to disclosure of interests or conflicts of interest

12.4.10 R (1) A research recommendation produced by a firm must disclose clearly and prominently the following information on its interests and conflicts of interest:

(a) major shareholdings that exist between it or any affiliated company on the one hand and the relevant issuer on the other hand, including at least:

   (i) shareholdings exceeding 5% of the total issued share capital in the relevant issuer held by the firm or any affiliated company; or

   (ii) shareholdings exceeding 5% of the total issued share capital of the firm or any affiliated company held by the relevant issuer;

(b) any other financial interests held by the firm or any affiliated company in relation to the relevant issuer which are significant in relation to the research recommendation;

(c) if applicable, a statement that the firm or any affiliated company is a market maker or liquidity provider in the securities of the relevant issuer or in any related derivatives;

(d) if applicable, a statement that the firm or any affiliated company has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of securities of the relevant issuer or in any related derivatives;

(e) if applicable, a statement that the firm or any affiliated company is party to any other agreement with the relevant issuer relating to the provision of investment banking services, provided that:

   (i) this would not entail the disclosure of any confidential commercial information; and

   (ii) the agreement has been in effect over the previous 12 months or has given rise during the same period to a payment or to the promise of payment; and
(f) if applicable, a statement that the firm or any affiliated company is party to an agreement with the relevant issuer relating to the production of the research recommendation.

(2) A firm must disclose, in general terms, in the research recommendation the effective organisational and administrative arrangements set up within the firm for the prevention and avoidance of conflicts of interest with respect to research recommendations, including information barriers.

(3) In the case of an investment firm or a credit institution, if a legal or natural person working for the firm who is involved in the preparation of a research recommendation, receives or purchases shares of the relevant issuer prior to a public offering of those shares, the price at which the shares were acquired and the date of acquisition must also be disclosed in the research recommendation.

(4) A firm, which is an investment firm or a credit institution, must publish the following information on a quarterly basis, and must disclose it in its research recommendations:

(a) the proportion of all research recommendations published during the relevant quarter that are "buy", "hold", "sell" or equivalent terms; and

(b) the proportion of relevant investments in each of these categories, issued by issuers to which the firm supplied material investment banking services during the previous 12 months.

(5) If the requirements under (1) to (4) would be disproportionate in relation to the length of the research recommendation, a firm may, instead, make clear and prominent reference in the research recommendation to the place where such disclosure can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the firm, or, if relevant, to the firm's conflicts of interest policy).

(6) In the case of non-written research recommendations, the requirements of (1) do not apply to the extent that they are disproportionate.

[Note: article 6 of the MAD Investment Recommendations Directive]

12.4.11 G Nothing in COBS 12.4.10R(1)(a) prevents a firm from choosing to disclose significant shareholdings above a lower threshold (for example, 1%) than is required by COBS 12.4.10R(1)(a).

12.4.12 G COBS 12.4.10R(1)(a) and (b) only require a firm to aggregate its shareholdings with those of affiliated companies if they act in concert in relation to those shareholdings.

12.4.13 G In relation to companies limited by shares and incorporated in Great Britain,
the most meaningful measure of "total issued share capital" is likely to be the concept of "paid up and issued share capital" under the Companies Act 1985.

12.4.14 G The FSA considers that it is important for the proportions published in compliance with COBS 12.4.10R(4) to be consistent and meaningful to the recipients of the research recommendations. Accordingly for non-equity material, the relevant categories should be meaningful to the recipients in terms of the course of action being recommended.

Identity of disseminators of recommendations

12.4.15 R If a firm disseminates a research recommendation produced by a third party, the research recommendation must identify the firm clearly and prominently.

[Note: article 7 of the MAD Investment Recommendations Directive]

General standard for dissemination of third party recommendations

12.4.16 R (1) If a research recommendation produced by a third party is substantially altered before dissemination by a firm:

(a) the disseminated material must clearly describe that alteration in detail; and

(b) if the substantial alteration consists of a change of the direction of the recommendation (such as changing a "buy" recommendation into a "hold" or "sell" recommendation or vice versa), the requirements laid down in COBS 12.4.5R to COBS 12.4.11G on producers must be met by the firm, to the extent of the substantial alteration.

(2) A firm which disseminates a substantially altered research recommendation must have a formal written policy so that the persons receiving the information may be directed to where they can have access to the identity of the producer of the research recommendation, the research recommendation itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.

(3) If a firm disseminates a summary of a research recommendation produced by a third party, it must:

(a) ensure that the summary is fair, clear and not misleading;

(b) identify the source research recommendation; and

(c) identify where (to the extent that they are publicly available) the third party's disclosures relating to the source research recommendation can be directly and easily accessed by the public.
Paragraphs (1) and (2) do not apply to news reporting on research recommendations produced by a third party where the substance of the research recommendation is not altered.

[Note: article 8 of the MAD Investment Recommendations Directive]

Additional obligations for investment firms and credit institutions disseminating third party recommendations

12.4.17 R If a firm, which is an investment firm or a credit institution, disseminates a research recommendation produced by a third party:

(1) the name of the competent authority of the firm must be clearly and prominently indicated on the disseminated material;

(2) if the producer of the research recommendation has not already disseminated it, the requirements in COBS 12.4.10R must be met by the firm as if it had produced the research recommendation itself; and

(3) if the firm has substantially altered the research recommendation, the requirements laid down in COBS 12.4.4R to COBS 12.4.10R must be met by the firm as if it had produced the research recommendation itself.

[Note: article 9 of the MAD Investment Recommendations Directive]
13 Preparing product information

13.1 The obligation to prepare product information

13.1.1 A firm must prepare a key features document for each packaged product, cash-deposit ISA and cash-deposit CTF it produces, in good time before that document has to be provided.

13.1.2 A firm must prepare the Consolidated Life Directive information for each life policy it effects, in good time before that information has to be provided.

[Note: article 36(1) of, and Annex III to, the Consolidated Life Directive]

Exceptions

13.1.3 A firm is not required to prepare:

(1) a document, if another firm has agreed to prepare it; or

(2) a key features document for:

(a) a unit in a simplified prospectus scheme; or

(b) a unit in an EEA simplified prospectus scheme; or

(c) a unit in a key features scheme, if it prepares a simplified prospectus, or the information appears with due prominence in another document, instead; or

(d) a stakeholder pension scheme, or personal pension scheme that is not a personal pension policy, if the information appears with due prominence in another document; or

(3) [intentionally blank]; or

(4) the Consolidated Life Directive information, if the policy is a reinsurance contract or a pure protection contract.

13.1.4 A single document prepared for more than one key features scheme, simplified prospectus scheme or EEA simplified prospectus scheme may combine more than one key features document, simplified prospectus or EEA simplified prospectus, or any combination of them, if the schemes are offered through a funds supermarket service and the document clearly describes the difference between the schemes.

13.2 Product information: production standards, form and contents

13.2.1 The documents and information prepared in accordance with the rules in this
chapter must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that is capable of meeting the *website conditions*.

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

13.2.2 R A *key features document* must also:

(1) be produced and presented to at least the same quality and standard as the sales or marketing material used to promote the relevant product;

(2) display the firm’s brand at least as prominently as any other;

(3) include the ‘keyfacts’ logo in a prominent position at the top of the *document*; and

(4) include the following statement in a prominent position:

> “The Financial Services Authority is the independent financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future reference”.

13.2.3 G The *Consolidated Life Directive information* can be included in a *key features document* or any other *document*.

13.2.4 R The *documents* and information prepared in accordance with the *rules* in this chapter must not include anything that might reasonably cause a retail client to be mistaken about the identity of the firm that produced, or will produce, the product.

13.3 Contents of a key features document

General requirements

13.3.1 R A *key features document* must:

(1) include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a retail client to be able to make an informed decision about whether to proceed; and

(2) explain:

(a) the arrangements for handling complaints about the product;

(b) that compensation might be available from the FSCS if the
firm cannot meet its liabilities in respect of the product (if applicable);

(c) that a right to cancel or withdraw exists, or does not exist, and, if it does exist, its duration and the conditions for exercising it, including information about the amount a client may have to pay if the right is exercised, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which any notice must be sent;

(d) (for a CTF) that stakeholder CTFs, cash-deposit CTFs and share CTFs are available and which type the firm is offering; and

(e) (for a personal pension scheme) clearly and prominently, that stakeholder pension schemes are generally available and might meet the client’s needs as well as the scheme on offer.

Additional requirements for packaged products

13.3.2 R Table

A key features document for a packaged product must:

<table>
<thead>
<tr>
<th>Heading</th>
<th>Information to be given</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>include the title: ‘key features of the [name of product]’;</td>
</tr>
<tr>
<td>(2)</td>
<td>describe the product in the order of the following headings, and by giving the following information under those headings:</td>
</tr>
<tr>
<td>‘Its aims’</td>
<td>A brief description of the product’s aims</td>
</tr>
<tr>
<td>‘Your commitment’ or ‘Your investment’</td>
<td>What a retail client is committing to or investing in and any consequences of failing to maintain the commitment or investment</td>
</tr>
<tr>
<td>‘Risks’</td>
<td>The material risks associated with the product, including a description of the factors that may have an adverse effect on performance or are material to the decision to invest</td>
</tr>
<tr>
<td>‘Questions and Answers’</td>
<td>(in the form of questions and answers) the principle terms of the product, what it will do for a retail client and any other information necessary to enable a retail client to make an informed decision.</td>
</tr>
</tbody>
</table>
**COBS 13 Annex 1R: The Consolidated Life Directive Information**

This annex belongs to **COBS 13.1.2R (The Consolidated Life Directive Information)**

<table>
<thead>
<tr>
<th>Information about the firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The <strong>firm's</strong> name and its legal form;</td>
</tr>
<tr>
<td>(2) The name of the <strong>EEA State</strong> in which the head office and, where appropriate, agency or branch concluding the contract is situated; and</td>
</tr>
<tr>
<td>(3) The address of the head office and, where appropriate, agency or branch concluding the contract.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Information about the commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) Definition of each benefit and each option;</td>
</tr>
<tr>
<td>(5) Term of the contract;</td>
</tr>
<tr>
<td>(6) Means of terminating the contract;</td>
</tr>
<tr>
<td>(7) Means of payment of <em>premiums</em> and duration of payments;</td>
</tr>
<tr>
<td>(8) Means of calculation and distribution of bonuses;</td>
</tr>
<tr>
<td>(9) Indication of surrender and paid-up values and the extent to which they are guaranteed;</td>
</tr>
<tr>
<td>(10) Information on the <em>premiums</em> for each benefit, both main benefits and supplementary benefits, where appropriate;</td>
</tr>
<tr>
<td>(11) For unit-linked <em>policies</em>, definition of the units to which the benefits are linked;</td>
</tr>
<tr>
<td>(12) Indication of the nature of the underlying assets for unit-linked <em>policies</em>;</td>
</tr>
<tr>
<td>(13) Arrangements for application of the cooling-off period;</td>
</tr>
<tr>
<td>(14) General information on the tax arrangements applicable to the type of <em>policy</em>;</td>
</tr>
<tr>
<td>(15) The arrangements for handling complaints concerning contracts by <em>policyholders</em>, lives assured or beneficiaries under contracts including, were appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings; and</td>
</tr>
<tr>
<td>(16) Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the <em>insurer</em> proposes to choose.</td>
</tr>
</tbody>
</table>

**Note:** article 36(1) of, and Annex III to, the *Consolidated Life Directive*
14 Providing product information

14.1 Interpretation

14.1.1 R In this chapter:

(1) ‘retail client’ includes the trustee or operator of a stakeholder pension scheme or personal pension scheme and the trustee of a money purchase occupational pension scheme; and

(2) ‘sell’ includes ‘sell, personally recommend or arrange the sale of’ in relation to a designated investment and equivalent activities in relation to a cash-deposit ISA and cash-deposit CTF.

14.2 Providing product information

[intentionally blank]

14.3 Information about designated investments

Application

14.3.1 R This section applies to a firm in relation to:

(1) MiFID or equivalent third country business; and

(2) the following regulated activities when carried on for a retail client:

(a) making a personal recommendation about a designated investment; or

(b) managing investments that are designated investments; or

(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

14.3.2 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
concerned, 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]

14.3.3 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]

14.3.4 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]

14.3.5 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]
Satisfying the provision rules

14.3.6 G (1) A firm need not treat each of several transactions in respect of the same type of financial instrument as a new or different service and so does not need to comply with the provision rules (COBS 14.3.2R to COBS 14.3.5R) in relation to each transaction.

(2) But a firm should ensure that the client has received all relevant information in relation to a transaction, such as details of product charges that differ from those already disclosed.

[Note: in respect of (1), recital 50 to to the MiFID implementing Directive]

14.3.7 G Providing a key features document or simplified prospectus may satisfy the requirements of the rules in this section.

Product information: form

14.3.8 R The documents and information provided in accordance with the rules in this section must be in a durable medium or available on a website (where that does not constitute a durable medium) that is capable of meeting the website conditions.

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

The timing rules

14.3.9 R (1) The information to be provided in accordance with the rules in this section must be provided in good time before a firm carries on designated investment business or ancillary services with or for a retail client.

(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, at the request of the client, the agreement was concluded using a means of distance communication which prevented the firm from complying with that rule; and

(b) in any case where the rule on voice telephony communications (COBS 5.1.12R) does not otherwise apply, the firm complies with 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

14.3.10 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

14.3.11 R If a firm provides a client with a simplified prospectus or an EEA simplified prospectus that meets the requirements of article 28 of the UCITS Directive, it will have provided appropriate information for the purpose of the requirement to disclose information on:

(1) designated investments and investment strategies (COBS 2.2.2R(1)(b)); and

(2) costs and associated charges (COBS 2.2.2R(1)(d) and COBS 7.1.8R);

in relation to the costs and associated charges in respect of the UCITS scheme itself, including the exit and entry commissions.

[Note: article 34 of the MiFID implementing Directive]

14.3.12 G A simplified prospectus provides sufficient information in relation to the costs and associated charges in respect of the UCITS scheme itself. However, a firm distributing units in a UCITS scheme should also inform a client about all of the other costs and associated charges related to the provision of its services in relation to units in the UCITS scheme.

[Note: recital 55 to the MiFID implementing Directive]
15 Cancellation

15.1 Application

15.1.1 G This chapter is relevant to a firm that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:

(1) most providers of retail financial products that are based on deposits or designated investments; and

(2) firms that enter into distance contracts with consumers that relate to accepting deposits or designated investment business.

15.2 The right to cancel

Cancellable contracts

15.2.1 R A consumer has a right to cancel any of the following contracts with a firm:

<table>
<thead>
<tr>
<th>Cancellable contract</th>
<th>Cancellation period</th>
<th>Supplementary provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Life and pensions:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• a life policy (including a pension annuity, a pension policy or within a wrapper)</td>
<td>30 calendar days</td>
<td>For a life policy effected when opening or transferring a wrapper, the 30 calendar day right to cancel applies to the entire arrangement. For a contract to buy a unit in a regulated collective investment scheme within a pension wrapper, the cancellation right for 'non-life/pensions (advised but not at a distance)' below may apply. Exemptions may apply (see COBS 15 Annex 1)</td>
</tr>
<tr>
<td>• a contract to join a personal pension scheme or a stakeholder pension scheme</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• a pension contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• a contract for a pension transfer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• a contract to vary an existing personal pension scheme or stakeholder pension scheme by exercising, for the first time, an option to make income withdrawals,</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Cash deposit ISAs:

<table>
<thead>
<tr>
<th>Cash deposit ISAs</th>
<th>14 calendar days</th>
<th>Exemptions may apply (see COBS 15 Annex 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• a contract for a cash deposit ISA</td>
<td>14 calendar days</td>
<td>Exemptions may apply (see COBS 15 Annex 1)</td>
</tr>
</tbody>
</table>

### Non-life/pensions (advised but not at a distance): a non-distance contract …

<table>
<thead>
<tr>
<th>Non-life/pensions (advised but not at a distance):</th>
<th>14 calendar days</th>
<th>Exemptions may apply (see COBS 15 Annex 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• to buy a unit in a regulated collective investment scheme (including within a wrapper or pension wrapper)</td>
<td>14 calendar days</td>
<td>These rights arise only following a personal recommendation of the contract (by the firm or any other person)</td>
</tr>
<tr>
<td>• to open or transfer a child trust fund (CTF)</td>
<td>14 calendar days</td>
<td>For a unit bought when opening or transferring a wrapper or pension wrapper, the 14 calendar day right to cancel applies to the entire arrangement</td>
</tr>
<tr>
<td>• to open or transfer an ISA or PEP</td>
<td>14 calendar days</td>
<td>Exemptions may apply (see COBS 15 Annex 1)</td>
</tr>
<tr>
<td>• for an Enterprise Investment Scheme</td>
<td>14 calendar days</td>
<td>Exemptions may apply (see COBS 15 Annex 1)</td>
</tr>
</tbody>
</table>

### Non-life/pensions (at a distance): a distance contract, relating to …

<table>
<thead>
<tr>
<th>Non-life/pensions (at a distance):</th>
<th>14 calendar days</th>
<th>Exemptions may apply (see COBS 15 Annex 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• accepting deposits</td>
<td>14 calendar days</td>
<td>Exemptions may apply (see COBS 15 Annex 1)</td>
</tr>
<tr>
<td>• designated investment business</td>
<td>14 calendar days</td>
<td>Exemptions may apply (see COBS 15 Annex 1)</td>
</tr>
</tbody>
</table>

[Note: article 35 of the Consolidated Life Directive, article 6(1) of the Distance Marketing Directive]

15.2.2 G (1) If the same transaction attracts more than one right to cancel, the firm should apply the longest cancellation period applicable.

(2) A firm may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the consumer as those in this chapter, unless the differences are clearly explained.

(3) If the right to cancel applies to a wrapper or pension wrapper and underlying investments, the firm may give the consumer the option of cancelling individual components separately if it wishes.

Start of cancellation period

15.2.3 R The cancellation period begins:

(1) either from the day of the conclusion of the contract, except in respect of contracts relating to life policies where the time limit will begin from the
time when the consumer is informed that the contract has been concluded; or

(2) from the day on which the consumer receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

[Note: article 35 of the Consolidated Life Directive, article 6(1) of the Distance Marketing Directive]

15.2.4 G If a firm does not give a consumer the required information about the right to cancel and other matters, the contract remains cancellable and the consumer will not be liable for any shortfall.

Disclosing a right to cancel or withdraw

15.2.5 R (1) The firm must disclose to the consumer:

(a) in good time before or, if that is not possible, immediately after the consumer is bound by a contract that attracts a right to cancel or withdraw; and

(b) in a durable medium;

the existence of the right to cancel or withdraw, its duration and the conditions for exercising it including information on the amount which the consumer may be required to pay, the consequences of not exercising it and practical instructions for exercising it indicating the address to which the notification of cancellation or withdrawal should be sent.

(2) This rule applies only where a consumer would not otherwise receive similar information under a rule in this sourcebook from the firm or another authorised person (such as under the distance marketing disclosure rules or the ‘Providing product information’ chapter).

15.3 Exercising a right to cancel

Notice of exercise

15.3.1 R If a consumer exercises his right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a durable medium available and accessible to the recipient, is dispatched before the deadline expires.

[Note: article 6 (6) of the Distance Marketing Directive]

15.3.2 R A consumer need not give any reason for exercising his right to cancel.

[Note: article 6(1) of the Distance Marketing Directive]
15.3.3 G The firm should accept any indication that the consumer wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the firm should treat the date cited by the consumer as the date when the notification was dispatched.

Record keeping

15.3.4 R The firm must make adequate records concerning the exercise of a right to cancel or withdraw and retain them:

(1) indefinitely in relation to a pension transfer, pension opt-out or FSAVC;

(2) for at least five years in relation to a life policy, pension contract, personal pension scheme or stakeholder pension scheme; and

(3) for at least three years in any other case.

15.4 Effects of cancellation

Termination of contract

15.4.1 R By exercising a right to cancel, the consumer withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

15.4.2 R (1) This rule applies in relation to a distance contract that is not a life policy, personal pension scheme, cash deposit ISA or CTF.

(2) When the consumer exercises his right to cancel he may be required to pay, without any undue delay, for the service actually provided by the firm in accordance with the contract. The performance of the contract may only begin after the consumer has given his approval. The amount payable must not:

(a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;

(b) in any case be such that it could be construed as a penalty.

(3) The firm may not require the consumer to pay any amount on the basis of this rule unless it can prove that the consumer was duly informed about the amount payable, in conformity with the distance marketing disclosure rules. However, in no case may the firm require such payment if it has commenced the performance of the contract before the expiry of the cancellation period without the consumer's prior request.

[Note: article 7(1), (2) and (3) of the Distance Marketing Directive]
Shortfall

15.4.3 R (1) The firm may require the consumer to pay for any loss under a contract caused by market movements that the firm would reasonably incur in cancelling it. The period for calculating the loss shall end on the day on which the firm receives the notification of cancellation.

(2) This rule:
   (a) does not apply for a distance contract or for a contract established on a regular or recurring premium or payment basis; and
   (b) only applies if the firm has complied with its obligations to disclose information concerning the right to cancel.

Obligations on cancellation

15.4.4 R The firm must, without any undue delay and no later than within 30 calendar days, return to the consumer any sums it has received from him in accordance with the distance contract, except for any amount that the consumer may be required to pay under this section. This period shall begin from the day on which the firm receives the notification of cancellation.

[Note: article 7(4) of the Distance Marketing Directive]

15.4.5 R The firm is entitled to receive from the consumer any sums and/or property he has received from the firm without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the consumer dispatches the notification of cancellation.

[Note: article 7(5) of the Distance Marketing Directive]

15.4.6 R Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

15.5 Special situations

Contracts with trustees and operators of pension schemes

15.5.1 R In this chapter:
   (1) references to a consumer include the trustees of an occupational pension scheme and the trustees or operator of a personal pension scheme or stakeholder pension scheme; and
   (2) any contract with such persons is to be treated as a non-distance contract.

Other legislation including for child trust funds

15.5.2 R This chapter applies as modified to the extent necessary for it to be compatible
with any enactment.

15.5.3 G For example:

(1) the Child Trust Fund Regulations contain provisions relevant to cancellation rights; in particular they provide that any uninvested sums held in connection with a CTF should be held in a designated bank account; and the effect of conditions 4(a) and (b) in regulation 5 of the Child Trust Fund Regulations (applicable to non-HMRC-allocated CTFs) is that a CTF opened by way of distance contract has a cancellable management agreement in all cases and the CTF cannot be opened until the cancellation period has expired, therefore the price fluctuation exemption is not engaged;

(2) where legislation does not permit sums within a personal pension scheme or CTF to be returned to a consumer, the requirement to do so on cancellation is modified to permit payment to another provider on behalf of the consumer; the firm should notify him, where relevant, as soon as possible that it holds money awaiting re-investment instructions; if that money is held in a non-interest bearing account this should be drawn to his attention.

Automatic cancellation of an attached distance contract

15.5.4 G When a consumer cancels a distance contract under this chapter, his notice may also operate to cancel any attached contract which is also a distance financial services contract unless the consumer gives notice that cancellation of the main contract is not to operate to cancel the attached contract (see regulation 12 of the Distance Marketing Regulations). Where relevant, this should be disclosed to the consumer along with other information on cancellation.

Appointed representatives

15.5.5 G This chapter does not act to cancel distance contracts entered into by an appointed representative as principal such as a distance contract to provide advisory services, but the Distance Marketing Regulations (regulations 9 to 13, see regulation 4(3)) may have this effect.

Maxi-ISAs

15.5.6 G Where a life policy or unit bought on opening or transferring an ISA is cancellable, the right to cancel, or substitute right to withdraw, applies to the entire arrangement. For example, a maxi-ISA comprising a life policy in the stocks and shares component and a cash component would be cancellable as a whole with a cancellation period of 30 calendar days. However, a firm is free to give the consumer the option of cancelling individual components separately with the same cancellation period if it wishes.
15 Annex 1 Exemptions from the right to cancel

Exemptions for life policies and pension contracts (non-distance)

1.1 R There is no right to cancel a non-distance contract that is a life policy or a pension contract:

(1) that is a pension fund management policy; or

(2) that relates to or is associated with securing benefits under a defined benefits pension scheme; or

(3) for a term of six months or less, unless it is a single premium contract where the designated retirement date is within six months of the date of the policy; or

(4) that is effected by the trustees of an occupational pension scheme or the employer, trustees or operator of a stakeholder pension scheme and that represents a:

(a) pension buy-out contract; or

(b) purchase of a without-profits deferred pension annuity; or

(c) defined benefits pension scheme or a single premium payment to any occupational pension scheme with a pooled fund (that is, underlying investments are not earmarked for individual scheme members); or

(d) purchase made to insure and secure members' pension benefits under a money-purchase occupational scheme or stakeholder pension scheme (unless it is the master, first or only policy); or

(5) if the consumer, at the time he signs the application, is habitually resident:

(a) in an EEA State other than the UK (but that state’s rules may apply); or

(b) outside the EEA and is not present in the UK.

1.2 G There is no right to cancel a non-distance contract for a traded life policy. This is because the 30-day right to cancel a life policy (in COBS 15.2.1R) applies at the point of conclusion of the life policy not on its assignment. However, there may be a 14-day right to cancel a distance contract for a traded life policy unless an exemption applies, since that distance contract relates to designated investment business.
Exemption for SIPPs

1.3 R There is no right to cancel a contract to join a SIPP whose performance has been fully completed by both parties at the consumer’s express request before the consumer exercises his right to cancel.

1.4 G If a consumer requests that a firm complete a transaction to join a SIPP before the expiry of the cancellation period, the firm should, in having regard to the information needs of the consumer, make him aware that he will lose his right to cancel and satisfy itself on reasonable grounds that the customer understands the cost and other implications.

Exemptions for certain pension arrangements (the ‘cancellation substitute’)

1.5 R There is no right to cancel:

(1) a contract for or funded (wholly or in part) from a pension transfer; or

(2) a pension annuity due to commence within a year and a day of the contract or a variation of one with similar commencement; or

(3) the exercise of an option to make income withdrawals;

to the extent that the right to cancel is replaced with a pre-contract right to withdraw the consumer’s offer of at least 14 calendar days. The combined period of the right to withdraw and any residual right to cancel must be at least 30 calendar days.

Exemption for pension compensation

1.6 R There is no right to cancel a pension annuity, a pension policy, a pension contract, or a contract to join a personal pension scheme or stakeholder pension scheme, which in each case is funded (wholly or in part) from payments derived from compensation or redress following a review undertaken in relation to a complaint.

Exemption for annuities after death of the life assured

1.7 R A firm need not accept notification of cancellation of a pension annuity contract if the life (or any of the lives) assured under it has died before notice is given.

Exemptions for units (non-distance)

1.8 R There is no right to cancel a non-distance contract to buy a unit in a regulated collective investment scheme:

(1) if the unit is not purchased from the scheme’s operator, from the operator’s associate acting as provider of a wrapper; or

(2) if the consumer is not a retail client; or
(3) if the contract represents an exchange of *units* between *sub-funds* of the same *umbrella*; or

(4) if the contract relates to a change between *units* of one class and *units* of another class in the same *scheme*; or

(5) if the contract relates to a *recognised scheme* and is with an *operator* who is not an *authorised person* or carrying on business in the *UK*; or

(6) if the *consumer* is not *habitually resident* in the *UK* at the date of the offer of the contract; or

(7) if the *firm* has reasonable grounds for assuming that no *personal recommendation* of the contract was provided by anyone carrying on *designated investment business* in the *UK*; or

(8) for the second and subsequent purchases of *units* under recurring single payment *unit* savings plans, provided that:

(a) the intention or option to make a series of single payments is disclosed at the outset (for example in pre-contract disclosure documents); or

(b) the intention is evidenced (for example, by the establishment of a direct debit mandate).

**Exemptions for ISAs, PEPs, CTFs and EISs (non-distance)**

1.9 R There is no right to cancel a non-distance contract:

(1) to open or transfer an *ISA* (mini or maxi and including all components whatever the underlying investment, but not a *cash deposit ISA* or an *ISA* containing a *life policy*); or

(2) to open or transfer a *CTF*; or

(3) to transfer a *PEP*; or

(4) for an *EIS*;

provided that:

(5) (for an *EIS, ISA or PEP*) the right to cancel is replaced with a seven calendar day, pre-contract right to withdraw the *consumer’s offer*; or

(6) the contract relates to an *EIS* or a *non-packaged product ISA, PEP* or *CTF* and is entered into following an explanation that neither a right to cancel nor a right to withdraw will apply given in accordance with the relevant rules on pre-contractual disclosure; or

(7) (for an *ISA or EIS*) the contract entered into is a second or subsequent *ISA* or *EIS* on substantially the same terms (such as mini-to-mini *ISA* or
maxi-to-maxi ISA) as an ISA or EIS purchased from the same ISA manager or EIS manager in the previous tax year.

Exemptions for distance contracts (all products and services)

1.10

There is no right to cancel a *distance contract*:

(1) whose price depends on fluctuations in the financial market outside the *firm’s* control, which may occur during the cancellation period, such as:

(a) foreign exchange; or

(b) money market instruments; or

(c) transferable securities; or

(d) units in collective investment undertakings; or

(e) financial-futures contracts, including equivalent cash-settled instruments; or

(f) forward interest-rate agreements; or

(g) interest-rate, currency and equity swaps; or

(h) options to acquire or dispose of any instruments referred to above including cash-settled instruments and options on currency and on interest rates; or

(2) whose performance has been fully completed by both parties at the consumer’s express request before the consumer exercises his right to cancel; or

(3) to *deal as agent, advise or arrange* if the distance contract is concluded merely as a stage in the provision of another service by the firm or another person.

[Note: article 6(2) and recital 19 of the Distance Marketing Directive]

1.11

In the case of *distance contracts* for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the right to cancel shall apply only to the initial agreement.

[Note: article 1(2) of the Distance Marketing Directive]
16 Reporting information to clients

16.1 General client reporting requirement

16.1.1 R A firm must ensure in relation to MiFID or equivalent third country business 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]

16.2 Occasional reporting

Execution of orders other than when managing investments

16.2.1 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) Paragraphs (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 paragraphs (1) to (4) of the MiFID implementing Directive]

16.2.2 G The requirement concerning orders relating to bonds funding a mortgage loan agreement is unlikely to be relevant to products in the United Kingdom market.

16.2.3 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]

Guidance on the requirements

16.2.4 G Where a firm executes an order in tranches, the firm may, where appropriate, indicate the trading time and the execution venue in a way that is consistent with this, such as, "multiple". In accordance with the client's best interests rule, a firm should provide additional information at the client's request.

16.2.5 G In accordance with COBS 2.4.9R, a firm may dispatch a confirmation to an agent, other than the firm or an associate of the firm, nominated by the client in writing.

Special cases

16.2.6 R In relation to business that is not MiFID or equivalent third country business, a firm need not despatch a confirmation if:

(1) the firm has agreed with the client (in the case of a retail client, in writing and with the client's informed consent) that confirmations need not be supplied, either generally or in specified circumstances; or

(2) the designated investment is a life policy or a personal pension scheme (other than a SIPP); or

(3) the designated investment is held within a CTF and the annual statement provided under the CTF Regulations includes the information that would have been contained in a confirmation under this section (other than information that has since become irrelevant).
Record keeping: occasional reporting

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

(1) for *MiFID* or equivalent third country business, for a period of at least five years; or

(2) for business that is not *MiFID* or equivalent third country business, for a period of at least three years;

from the date of despatch.

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

16.3 Periodic reporting

Provision by the firm and contents

16.3.1 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*]

16.3.2 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 16.3.3R) and there are no transactions in *derivatives* or other securities 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, 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*. 

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

16.3.3 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 essential 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 of the information identified in column (1) of the table in COBS 16 Annex 1R 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]

16.3.4 G In accordance with COBS 2.4.9R, a firm may dispatch a periodic statement to an agent, other than the firm or an associate of the firm, nominated by the client in writing.

16.3.5 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 40(4) of the MiFID implementing Directive]

16.3.6 R (1) If a firm:

(a) manages investments for a retail client; or

(b) operates a retail client account that includes an uncovered open position in a contingent liability transaction,

it must report to the retail client any losses exceeding any predetermined threshold, agreed between it and the retail client.

(2) The firm must report:

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

[Note: article 42 of the MiFID implementing Directive]

16.3.7 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]

16.3.8 R [intentionally blank]

Guidance on contingent liability transaction

16.3.9 G When providing a periodic statement to a retail client, a firm should consider whether to include:

(1) the collateral value in respect of any contingent liability transaction in the client's portfolio during the relevant period; and

(2) option account valuations in respect of each open option written by the client in the client's portfolio at the end of the relevant period; stating:

(a) the share, future, index or other investment involved;

(b) the trade price and date for the opening transaction, unless the valuation statement follows the statement for the period in which the option was opened;

(c) the market price of the contract; and

(d) the exercise price of the contract.

(3) Option account valuations may show an average trade price and market price in respect of an option series if the retail client buys a number of contracts within the same series.

Periodic reporting: special situations

16.3.10 R In relation to business that is not MiFID or equivalent third country business, a firm need not provide a periodic statement:

(1) to a client habitually resident outside the United Kingdom if the client concerned has so requested or the firm has taken reasonable steps to establish that he does not wish to receive it;

(2) in respect of a CTF, if the annual statement provided under the CTF Regulations contains the periodic information.

Record keeping: periodic reporting
A firm must make, and retain, a copy of any periodic statement:

(1) for MiFID or equivalent third country business, for a period of at least five years; or

(2) for business that is not MiFID or equivalent third country business, for a period of at least three years;

from the date of despatch.

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

16.4 Statements of client designated investments or client money

16.4.1 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.

(3) This rule does not apply in relation to a firm holding client designated investments or client money under a personal pension scheme or a stakeholder pension scheme where doing so is not MiFID or equivalent third country business.

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

16.4.2 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]

16.4.3 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.

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16.4.4 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]

16.5 Quotations for surrender values

16.5.1 R When a long-term insurer receives any indication that a retail client wishes to surrender a life policy which is of the type that may be traded on an existing secondary market for life policies, it must, before accepting a surrender, make the policyholder aware that he may be able to sell his policy instead, how he may do so and that there may be financial benefits in doing so.

16.6 Life insurance contracts – communications to clients

Disclosure for life insurance contracts: information to be provided during the term of the contract

16.6.1 R This section applies to a long-term insurer, unless, at the time of application, the client, other than an EEA ECA recipient, was habitually resident:

(1) in an EEA State other than the United Kingdom; or

(2) outside the EEA and he was not present in the United Kingdom.

16.6.2 R If during the term of a life policy entered into on or after 1 July 1994 there is any proposed change in the information referred to in paragraphs (1) to (12) of the Consolidated Life Directive information (COBS 13 Annex 1R) the long-term insurer must inform the policyholder of the effect of the change before the change is made.

[Note: article 36(2) of the Consolidated Life Directive]

16.6.3 R If a life policy entered into on or after 1 July 1994 provides for the payment of bonuses and the amounts of bonuses are unspecified, the long-term insurer must, in every calendar year except the first, either:

(1) notify the policyholder in writing of the amount of any bonus which has become payable under the contract, and which has not previously been notified under this rule; or

(2) give the policyholder in writing sufficient information to enable him to determine the amount of any such bonus.
16.6.4 R (1) When a firm provides information in accordance with this section, it must provide the information in a durable medium, unless (2) applies.

(2) If the contract is being made by telephone, the firm may give the information orally to the customer. If the customer enters into the contract, a written version of the required information must be sent to the customer within five business days of the contract being entered into.

16.6.5 R Where a life policy is effected jointly, the information required by this section may be sent to the first named client.

16.6.6 R A firm must make an adequate record of information provided to a customer under this section and retain that record for a minimum period after the information is provided of five years.

COBS 16 Annex 1 R
This annex forms part of COBS 16.2.1R

COBS 16 Annex 1 R

<table>
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<td>5. the type of the order (for example, a limit order or a</td>
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COBS 16 Annex 1 R

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<td>7. the instrument identification;</td>
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<td>9. the nature of the order if other than buy/sell;</td>
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<td>10. the quantity;</td>
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<td>11. the unit price;</td>
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<td>12. the total consideration;</td>
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<td>13. a total sum of the commissions and expenses charged and, where the <em>retail client</em> so requests, an itemised breakdown;</td>
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<td>17. the <em>client's</em> 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 <em>client</em>; and</td>
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<tr>
<td>18. if the <em>client's</em> counterparty was the <em>firm</em> itself or any person in the <em>firm's group</em> or another <em>client</em> of the <em>firm</em>, the fact that this was the case unless the order was <em>executed</em> through a trading system that facilitates anonymous trading.</td>
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**Note:** article 40(4) and recital 64 to the MiFID implementing Directive

*A firm* may provide the *client* 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 the MiFID implementing Directive
This annex forms part of COBS 16.3.1R.

<table>
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<td>3. a statement of the contents and the valuation of the portfolio, including details of:</td>
</tr>
<tr>
<td>(a) each designated investment held, its market value or fair value if market value is unavailable;</td>
</tr>
<tr>
<td>(b) the cash balance at the beginning and at the end of the reporting period; and</td>
</tr>
<tr>
<td>(c) the performance of the portfolio during the reporting period;</td>
</tr>
<tr>
<td>4. the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;</td>
</tr>
<tr>
<td>5. a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the firm and the client;</td>
</tr>
<tr>
<td>6. the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio; and</td>
</tr>
<tr>
<td>7. information about other corporate actions giving rights in relation to designated investments held in the portfolio.</td>
</tr>
</tbody>
</table>

[Note: article 41(2) of MiFID implementing Directive]
Claims handling for long-term care insurance

Providing information to claimants and dealing with claims

When an insurer or managing agent receives a claim under a long-term care insurance contract, it must respond promptly by providing the policyholder, or the person acting on the policyholder's behalf, with:

1. a claim form (if it requires one to be completed);
2. a summary of its claims handling procedure; and
3. appropriate information about the medical criteria that must be met, and any waiting periods that apply, under the terms of the policy.

Responding to a claim

As soon as reasonably practicable after receipt of a claim, the insurer or managing agent must tell the policyholder, or the person acting on the policyholder's behalf:

1. (for each part of the claim it accepts), whether the claim will be settled by paying the policyholder, providing goods or services to the policyholder or paying another person to provide those goods or services; and
2. (for each part of the claim it rejects), why the claim has been rejected and whether any future rights to claim exist.

Rejecting a claim

An insurer and a managing agent must not:

1. unreasonably reject a claim; or
2. except where there is evidence of fraud, reject a claim for:
   a. non-disclosure of a fact material to the risk which the policyholder could not reasonably have been expected to disclose; or
   b. misrepresentation of a fact material to the risk, unless the misrepresentation is negligent; or
   c. breach of warranty, unless the circumstances of the claim are connected to the breach, the warranty is material to the risk and was drawn to the policyholder's attention before the conclusion of the contract.
Pensions – supplementary provisions

19.1 Pension transfers and opt-outs

Preparing and providing a transfer analysis

19.1.1 R If an individual who is not a pension transfer specialist gives a personal recommendation about a pension transfer or pension opt-out on a firm's behalf, the firm must ensure that the recommendation is checked by a pension transfer specialist.

19.1.2 R A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme with the benefits afforded by a personal pension scheme or stakeholder pension scheme, before it advises a retail client to transfer out of a defined benefits pension scheme;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client’s attention to the factors that do and do not support the firm’s advice, no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm’s comparison and its advice.

19.1.3 G In particular, the comparison should:

(1) take into account all of the retail client’s relevant circumstances;

(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme; and

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up.

19.1.4 R When a firm compares the benefits likely to be paid under a defined benefits pension scheme with the benefits afforded by a personal pension scheme or stakeholder pension scheme (COBS 19.1.2R(1)), it must:

(1) assume that:
(a) the annuity interest rate is the intermediate rate of return appropriate for a level or fixed rate of increase annuity ([cross-reference to follow later]) or the rate for annuities in payment (if less)

(b) the retail prices index is 2.5%

(c) the average earnings index and the rate for section 21 orders is 4.0%

(d) the pre-retirement limited price indexation revaluation is 2.5%

(e) the post-retirement limited price increases at 2.5%

(f) the index linked pensions rate is the intermediate rate of return in [cross-reference to follow later] for annuities linked to the retail prices index; or use more cautious assumptions;

(2) calculate the interest rate in deferment; and

(3) have regard to benefits which commence at difference times.

19.1.5 R If a firm arranges a pension transfer or pension opt-out for a retail client as an execution-only transaction, the firm must make, and retain indefinitely, a clear record of the fact that no personal recommendation was given to that client.

Suitability

19.1.6 G When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client’s best interests.

19.1.7 G When a firm advises a retail client on a pension transfer or pension opt-out, it should consider the client’s attitude to risk in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

19.1.8 G When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and
19.1.9 G If a firm proposes to advise a retail client not to proceed with a pension transfer or pension opt-out, it should give that advice in writing.

19.2 Personal pensions, FSAVCs and AVCs

Financial promotions

19.2.1 G A financial promotion for an AVC or FSAVC should contain a prominent warning that, as an alternative:

(1) (for AVC promotions) FSAVCs are available;

(2) (for FSAVC promotions) an AVC exists, and that details can be obtained from the scheme administrator (if that is the case).

Suitability

19.2.2 R When a firm prepares a suitability report it must:

(1) (in the case of a personal pension scheme), explain why it considers the personal pension scheme to be at least as suitable as a stakeholder pension scheme; and

(2) (in the case of an FSAVC), explain why it considers the FSAVC to be at least as suitable as any stakeholder pension scheme, AVC or facility to make additional contributions to an occupational pension scheme which is available to the retail client.

19.2.3 R When a firm promotes a personal pension scheme, including a group personal pension scheme, to a group of employees it must:

(1) be satisfied on reasonable grounds that the scheme is likely to be at least as suitable for the majority of the employees as a stakeholder pension scheme; and

(2) record why it thinks the promotion is justified.

19.3 Product disclosure to members of occupational pension schemes

19.3.1 R (1) When a firm sells, personally recommends or arranges the sale of a new group or master life policy, the first in a series of individual life policies or the first units in a particular key features scheme or simplified prospectus scheme to or for the trustees of an occupational pension scheme for an AVC, it must give the trustees sufficient information to pass to the relevant member for that member to be able to make informed comparisons between the AVC and any alternative
personal pension schemes and stakeholder pension schemes available.

(2) This rule applies to an AVC where members' benefits are linked to the earmarked segments of a life policy or scheme, but it does not apply to an AVC where the trustees make pooled investments and have their own arrangements for allocating investment returns to determine members' AVC benefits.

19.4 Open market options

19.4.1 R In this section:

(1) ‘intended retirement date’ means:

(a) the date (according to the most recent recorded information available to the provider) when the scheme member intends to retire, or to bring the benefits in the scheme into payment, whichever is the earlier; or

(b) if there is no such date, the scheme member's state pension age;

(2) ‘open market option’ means the option to use the proceeds of a personal pension scheme, stakeholder pension scheme, FSAVC, retirement annuity contract or pension buy-out contract to purchase an annuity on the open market; and

(3) ‘open market option statement’ means:

(a) the FSA's “Your pension: it's time to choose” fact sheet, together with a written summary of the retail client’s open market option, which is sufficient for the client to be able to make an informed decision about whether to exercise, or to decline to exercise, an open market option; or

(b) a written statement that gives materially the same information.

19.4.2 R (1) If a retail client asks a firm for a retirement quotation more than four months before the client's intended retirement date, the firm must give the client an open market option statement with or as part of its reply, unless the firm has given the client such a statement in the last 12 months.

(2) If a firm does not receive such a request, it must provide a retail client with an open market option statement between four and six months before the client's intended retirement date.

19.4.3 R The firm must:

(1) remind the retail client about the open market option statement; and
(2) tell the client what sum of money will be available to purchase an annuity on the open market;

at least six weeks before the client’s intended retirement date.

19.4.4 R If a retail client with an open market option tells a firm that he is considering, or has decided:

(1) to discontinue an income withdrawal arrangement; or

(2) to take a further sum of money from his pension to buy an annuity as part of a phased retirement,

the firm must give the client an open market option statement, unless the firm has given the client such a statement in the last 12 months.
20 With-profits

20.1 Application

20.1.1 R This chapter applies to a firm carrying on with-profits business, except to the extent modified in the following rules.

20.1.2 R (1) The section on the process for reattribution (COBS 20.2.42R to COBS 20.2.52G):

(a) applies to a firm that is proposing to make a reattribution of its inherited estate;

(b) but not if, and to the extent that, it would require the firm to breach, or would prevent the firm from complying with, an order made by a court of competent jurisdiction.

(2) If a firm proposes to seek an order from a court of competent jurisdiction that would allow or require it to act in a way that is contrary to the rules on reattribution (COBS 20.2.42R to COBS 20.2.52G) (through, or because of, the exception in (1)(b)), the firm must:

(a) tell the FSA that that is what it proposes to do;

(b) seek the order at the earliest opportunity; and

(c) if it wishes to take a step that would be contrary to those rules in anticipation of such an order, secure a waiver before it does so.

20.1.3 R For an EEA insurer:

(1) the rules and guidance on treating with-profits policyholders fairly (COBS 20.2.1G to COBS 20.2.41G and COBS 20.2.53R to COBS 20.2.60G) apply only in so far as responsibility for the matter in question has not been reserved to the firm's Home State regulator by a European Community instrument;

(2) COBS 20.3 (Principles and Practices of Financial Management) does not apply;

(3) the rule on providing information to with-profits policyholders who are habitually resident in the United Kingdom (COBS 20.4.4R) and the rule on production and provision of a CFPPFM (COBS 20.4.5R) apply, but the rest of COBS 20.4 (Communications with with-profits policyholders) does not; and

(4) the rule on production and provision of a CFPPFM (COBS 20.4.5R) applies as if a reference to a firm was a reference to an EEA insurer in
relation to any of its with-profits policyholders who are habitually resident in the United Kingdom.

20.1.4 R The following do not apply to a non-directive friendly society:

(1) COBS 20.3 (Principles and Practices of Financial Management); and

(2) COBS 20.4 (Communications with with-profits policyholders).

20.1.5 R This chapter does not apply to with-profits business that consists of effecting or carrying out Holloway sickness policies.

20.2 Treating with-profits policyholders fairly

Introduction

20.2.1 G With-profits business, by virtue of its nature and the extent of discretion applied by firms in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of policyholders. The rules in this section address specific situations where the risk may be particularly acute. However, a firm should give careful consideration to any aspect of its operating practice that has a bearing on the interests of its with-profits policyholders to ensure that it does not lead to an undisclosed, or unfair, benefit to shareholders.

20.2.2 R Neither Principle 6 (Customers' interests) nor the rules on treating with-profits policyholders fairly (COBS 20.2) relieve a firm of its obligation to deliver each policyholder's contractual entitlement.

Amounts payable under with-profits policies

20.2.3 R A firm must have good reason to believe that its pay-outs on individual with-profits policies are fair.

Amounts payable under with-profits policies: Maturity payments

20.2.4 G In this section, maturity payments include payments made when a with-profits policy provides for a minimum guaranteed amount to be paid.

20.2.5 R (1) Unless a firm cannot reasonably compare a maturity payment with a calculated asset share, it must:

(a) set a target range for the maturity payments that it will make on:

(i) all of its with-profits policies; or

(ii) each group of its with-profits policies;
(b) ensure that each target range:

(i) is expressed as a percentage of unsmoothed asset share; and

(ii) includes 100% of unsmoothed asset share; and

(c) manage its with-profits business, and the business of each with-profit fund, with the aim of making on each with-profit policy a maturity payment that falls within the relevant target range.

(2) Unsmoothed asset share means:

(a) the unsmoothed asset share of the relevant with-profits policy; or

(b) an estimate of the unsmoothed asset share of the relevant with-profits policy derived from the unsmoothed asset share of one or more specimen with-profits policies, which a firm has selected to represent a group, or all, of the with-profits policies effected in the same with-profits fund.

(3) A firm must calculate unsmoothed asset share by:

(a) applying the methods in INSINU 1.3.119R to INSINU 1.3.123R;

(b) including any amounts that have been added to the policy as the result of a distribution from an inherited estate; and

(c) subject to (d), and where the terms of the policy so provide, adding or subtracting an amount that reflects the experience of the insurance business in the relevant with-profits fund; but

(d) if a with-profits fund has suffered adverse experience, which results from a firm’s failure to comply with the rules and guidance on treating with-profits policyholders fairly (COBS 20.2.1G to COBS 20.2.41G and COBS 20.2.53R to COBS 20.2.60G), that adverse experience may only be taken into account if, and to the extent that, in the reasonable opinion of the firm’s governing body, the amount referred to in (c) cannot be met from:

(i) the firm’s inherited estate (if any); or

(ii) any assets attributable to shareholders, whether or not they are held in the relevant with-profits fund.

20.2.6 R Notwithstanding that a firm must aim to make maturity payments that fall
within the relevant target range, a firm may make a maturity payment that falls outside the target range if it has a good reason to believe that at least 90% of maturity payments on *with-profits policies* in that group have fallen, or will fall, within the relevant target range.

20.2.7 G If it is not fair or reasonable to calculate or assess a maturity payment using the *prescribed asset share methodology*, a firm may use another methodology to set bonus rates, if that methodology properly reflects its representations to *with-profits policyholders* and it applies that methodology consistently.

20.2.8 R A firm may make deductions from asset share to meet the cost of guarantees, or the cost of capital, only under a plan approved by its *governing body* and described in its *PPFM*. A firm must ensure that any deductions are proportionate to the costs they are intended to offset.

20.2.9 R If a firm has approved a plan to make deductions from asset share, it must ensure that its planned deductions do not change unless justified by changes in the business or economic environment, or changes in the nature of the firm's liabilities as a result of policyholders exercising options in their policies.

20.2.10 R If a firm calculates maturity payments using the *prescribed asset share methodology*, it must manage its *with-profits business*, and each *with-profits fund*, with the longer term aim that it will make aggregate maturity payments of 100% of unsmoothed asset share.

Amounts payable under with-profits policies: Surrender payments

20.2.11 G A firm may use its own methodology to calculate surrender payments, but it should have good reason to believe that its methodology produces a result which, in aggregate across all similar policies, is not less than the result of the *prescribed asset share methodology*. A firm might, for example, test the surrender payments on a suitable range of specimen *with-profits policies*.

20.2.12 R If a firm calculates surrender payments using the *prescribed asset share methodology*, it must first calculate what the surrender payment would be if it was a maturity payment calculated by that methodology.

20.2.13 R A firm may then make a deduction from unsmoothed asset share if necessary, in the reasonable opinion of the firm's *governing body*, to protect the interests of the firm's remaining *with-profits policyholders*.

20.2.14 G Amounts that might be deducted include:

1. the firm's unrecovered costs, including any financing costs incurred in effecting or carrying out the surrendered *with-profits policy* to the date of surrender, including the costs that might have been recovered if the policy had remained in force;

2. costs that would fall on the *with-profits fund*, if the surrender value is
calculated by reference to an assumed market value of assets which exceeds the true market value of those assets;

(3) the firm's costs incurred in administrating the surrender; and

(4) a fair contribution towards the cost of any contractual benefits due on the whole, or an appropriate part, of the continuing policies in the with-profits fund which would otherwise result in higher costs falling on the continuing with-profits policies.

20.2.15 G The provisions dealing with the calculation of surrender payments (COBS 20.2.11G to COBS 20.2.12R) do not prevent a firm from setting a target range for surrender payments where the top-end of the range is lower than the top-end of the relevant range for maturity payments.

20.2.16 R A firm must not make a market value reduction to the face value of the units of an accumulating with-profits policy unless:

(1) the market value of the with-profits assets in the relevant with-profits fund is, or is expected to be, significantly less than the assumed value of the assets on which the face value of the policy has been based; or

(2) there has been, or there is expected to be, a high volume of surrenders, relative to the liquidity of the relevant with-profits fund; and

the market value reduction is no greater than is necessary to reflect the impact of (1) or (2) on the relevant surrender payment.

Conditions relevant to distributions

20.2.17 R A firm must:

(1) not make a distribution from a with-profits fund, unless the whole of the cost of that distribution can be met without eliminating the regulatory surplus in that with-profits fund;

(2) ensure that the amount distributed to policyholders from a with-profits fund is not less than the required percentage of the total amount distributed; and

(3) if it adjusts the amounts distributed to policyholders, apply a proportionate adjustment to amounts distributed to shareholders, so that the distribution to policyholders will not be less than the required percentage.

20.2.18 R A realistic basis life firm must not make a distribution from a with-profits fund to any person who is not a with-profits policyholder, unless the whole of the cost of that distribution (including the cost of any obligations that will or may arise from the decision to make a distribution) can be met from the excess of the realistic value of assets over the realistic value of liabilities.
in that *with-profits fund*.

20.2.19 R A distribution to a *person* who is not a *with-profits policyholder* includes a transfer of assets out of a *with-profits fund* that is not made to satisfy a liability of that fund.

20.2.20 R If, on a distribution, a *firm* incurs a tax liability on a transfer to shareholders, it must not attribute that tax liability to a *with-profits fund*, unless:

1. the *firm* can show that attributing the tax liability to that *with-profits fund* is consistent with its established practice;
2. that established practice is explained in the *firm*’s *PPFM*; and
3. that liability is not charged to asset shares.

Requirement relating to distribution of an excess surplus

20.2.21 R At least once a year (or, in the case of a *non-directive friendly society*, at least once in every three years), a *firm’s governing body* must determine whether the *firm’s with-profits fund*, or any of the *firm’s with-profits funds*, has an *excess surplus*.

20.2.22 E (1) If a *with-profits fund* has an *excess surplus*, and to retain that surplus would be a breach of *Principle 6* (Customers' interests), the *firm* should:

(a) make a distribution from that *with-profits fund*; or
(b) carry out a *reattri**bution*.

(2) Compliance with (1) may be relied on as tending to establish compliance with *Principle 6* (Customers' interests).

(3) Contravention of (1) may be relied on as tending to establish a contravention of *Principle 6* (Customers' interests).

Charges to a with-profits fund

20.2.23 R A *firm* must only charge costs to a with-profits fund which have been, or will be, incurred in operating the *with-profits fund*. This may include a fair proportion of overheads.

20.2.24 R A *firm* must not pay compensation or redress from a *with-profits fund*, unless the payment is made to a *policyholder*, or former *policyholder*, of that *with-profits fund*.

20.2.25 R A *firm* may pay compensation or redress due to a *policyholder*, or former *policyholder*:

1. from assets attributable to shareholders, whether or not they are held
within a long-term insurance fund; or

(2) from its inherited estate (if any); or

(3) from assets that would otherwise be attributable to asset shares, if, in the reasonable opinion of the firm's governing body, that compensation or redress cannot be paid from the assets in (1) or (2), or from any other source.

20.2.26 R A proprietary firm must not charge to a with-profits fund any amounts paid or payable to a skilled person in connection with a report under section 166 of the Act (Reports by skilled persons) if the report indicates that the firm has, or may have, materially failed to satisfy its obligations under the regulatory system.

Tax charge to a with-profits fund

20.2.27 R A firm must not charge a contribution to corporation tax to a with-profits fund, if that contribution exceeds the notional corporation tax liability that would be charged to that with-profits fund if it were assessed to tax as a separate body corporate.

New business

20.2.28 R If a firm proposes to effect new contracts of insurance in an existing with-profits fund, it must only do so on terms that are, in the reasonable opinion of the firm's governing body, unlikely to have a material adverse effect on the interests of its existing with-profits policyholders.

20.2.29 G In some circumstances, it may be difficult or impossible for a firm to mitigate the risk of a material adverse effect on its existing, or new, with-profits policyholders, unless it establishes a new bonus series or with-profits fund. Circumstances that might cause a firm to establish a new bonus series or with-profits fund include:

(1) where the firm has a high level of guarantees or options in its existing with-profits policies, which might place an excessive burden on new with-profits policies, or vice versa; and

(2) where the potential risks are likely to be so great that a single with-profits fund cannot provide adequately for the interests of new and existing policyholders, even after allowing for any beneficial effects of diversification. Such potential risks are likely to arise from significant differences in the terms and conditions of the new and existing with-profits policies, including the basis on which charges are levied and reviewed.

20.2.30 G When a firm prices the new insurance business that it proposes to effect in an existing with-profits fund, it should estimate the volume of new insurance business that it is likely to effect and then build in adequate margins that will allow it to recover any acquisition costs to be charged to the with-profits
20.2.31 G When a firm sets a target volume for new insurance business in an existing with-profits fund, it should pay particular attention to the risk of disadvantage to existing with-profits policyholders. Those policyholders might be disadvantaged, for example, by the need to retain additional capital to support a rapid growth in new business, when that capital might have been distributed in the ordinary course of the firm's existing business.

Relationship of a with-profits fund with the firm and any connected persons

20.2.32 R A firm carrying on with-profits business must not:

1. make a loan to a connected person using assets in a with-profits fund; or

2. give a guarantee to, or for the benefit of, a connected person, where the guarantee will be backed using assets in a with-profits fund;

unless that loan or guarantee:

3. will be on commercial terms;

4. will, in the reasonable opinion of the firm's senior management, be beneficial to the with-profits policyholders in the relevant with-profits fund; and

5. will not, in the reasonable opinion of the firm's senior management, expose those policyholders to undue credit or group risk.

Contingent loans and other forms of support for the with-profits fund

20.2.33 G (1) If a firm, or a connected person, provides support to a with-profits fund (for example, by a contingent loan), no reliance should be placed on that support when the firm assesses the with-profits fund's financial position unless there are clear and unambiguous criteria governing any repayment obligations to the support provider.

(2) The degree of reliance placed on that support should depend on the subordination of the support to the fair treatment of with-profits policyholders and clarification of what fair treatment means in various circumstances. For a realistic basis life firm this would normally be evidenced by the liability for such support being capable, under stress, of a progressively lower valuation in the future policy-related liabilities.

20.2.34 G Where assets from outside a with-profits fund are made available to support that fund (and there is no ambiguity in the criteria governing any repayment obligations to the support provider), a firm should manage the fund disregarding the liability to repay those assets, at least in so far as that is necessary for its policyholders to be treated fairly.
Other guidance on the conduct of with-profit business

20.2.35 G When a firm determines its investment strategy, and the acceptable level of risk within that strategy, it should take into account:

(1) the extent of the guarantee in its with-profits policies;
(2) any representation that it has made to its with-profits policyholders;
(3) its established practice; and
(4) the amount of capital support available.

20.2.36 G If a proprietary firm is considering using with-profits assets to finance the purchase of another business, directly or by or through a connected person, or if a firm is considering whether it should retain such an investment, it should consider whether the purchase or retention would be, or will remain, fair to its with-profits policyholders. When a firm makes that assessment it should consider whether it would be more appropriate for the investment to be made using assets other than those in a with-profits fund.

20.2.37 G If a firm carries out non-profit insurance business in a with-profits fund, it should review the profitability of the non-profit insurance business regularly.

20.2.38 G If a firm has reinsured its with-profits insurance business into another insurance undertaking, it should take reasonable steps to discharge its responsibilities to its with-profits policyholders, in respect of the reinsured business. Those steps should include maintaining adequate controls.

Major changes in with-profits funds

20.2.39 R A firm must not enter into a material transaction relating to a with-profits fund unless, in the reasonable opinion of the firm's governing body, the transaction is unlikely to have a material adverse effect on the interests of that fund's existing with-profits policyholders.

20.2.40 R A material transaction includes a series of related non-material transactions which, if taken together, are material.

20.2.41 G Examples of material transactions include:

(1) a significant bulk outwards reinsurance contract;
(2) inwards reinsurance of with-profits business from another insurance undertaking;
(3) a financial engineering transaction that would materially change the profile of any surplus expected to emerge on the with-profits fund's existing insurance business; and
(4) a significant restructuring of the with-profits fund, especially if it involves the creation of new sub-funds.

Process for reattribution of inherited estates: Policyholder advocate: appointment and role

20.2.42 R A firm that is seeking to make a reattribution of its inherited estate must:

(1) identify at the earliest appropriate point a policyholder advocate, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of policyholders, to negotiate with the firm on behalf of relevant with-profits policyholders;

(2) seek the approval of the FSA for the appointment of the policyholder advocate as soon as he is identified, or appoint a policyholder advocate nominated by the FSA if its approval is not granted; and

(3) involve the policyholder advocate designate at the earliest possible opportunity to enable him to participate effectively in the negotiations about the proposals for the reattribution.

20.2.43 G The firm should include an independent element in the policyholder advocate selection process, which may include consulting representative groups of policyholders or using the services of a recruitment consultant. When considering an application for approval of a nominee to perform the policyholder advocate role, the FSA will have regard to the extent to which the firm has involved others in the selection process.

20.2.44 G The precise role of the policyholder advocate in any particular case will depend on the nature of the firm and the reattribution proposed. A firm will need to discuss with the FSA the precise role of the policyholder advocate in a particular case (COBS 20.2.45R). However, the role of the policyholder advocate should include:

(1) negotiating with the firm, on behalf of the relevant with-profits policyholders, the benefits to be offered to them in exchange for the rights or interests they will be asked to give up;

(2) commenting to with-profits policyholders, on:

   (a) the methodology used for the allocation of benefits amongst the relevant (or groups of) with-profits policyholders and the form of those benefits;

   (b) the criteria used for determining the eligibility of the various with-profits policyholders;

   (c) the terms and conditions of the proposals (to the extent that they materially affect the benefits to be offered, or the bonuses that may be added to with-profits policies); and
(d) the views expressed by the independent expert or the reattribution expert (as the case may be), and the firm's with-profits actuary on the allocation of any benefits amongst the relevant with-profits policyholders; and

(3) telling with-profits policyholders, or each group of with-profits policyholders, with reasons, whether the firm's proposals are in their interests.

Process for reattribution of inherited estates: Policyholder advocate: terms of appointment

20.2.45 R A firm must:

(1) notify the FSA of the terms on which it proposes to appoint a policyholder advocate (whether or not the candidate was nominated by the FSA); and

(2) ensure that the terms of appointment for the policyholder advocate:

(a) stress the independent nature of the policyholder advocate's appointment and function, and are consistent with it;

(b) define the relationship of the policyholder advocate to the firm and its policyholders;

(c) set out arrangements for communications between the policyholder advocate and policyholders;

(d) make provision for the resolution of any disputes between the firm and the policyholder advocate;

(e) specify when and how the policyholder advocate's appointment may be terminated; and

(f) allow the policyholder advocate to communicate freely and in confidence with the FSA.

20.2.46 G A firm may include, within the policyholder advocate's terms of appointment, arrangements for the policyholder advocate to be indemnified in respect of certain claims that may be made against him in connection with the performance of his functions. If such indemnity is included, it should not include protection against any liability arising from acts of bad faith.

Process for reattribution of inherited estates: Reattribution expert

20.2.47 R Where a firm is not otherwise required to appoint an independent expert, it must:

(1) appoint a reattribution expert to undertake an objective assessment of its reattribution proposals, who must be:
(a) nominated or approved by the FSA before he is appointed; and
(b) free from any conflicts of interest that may, or may appear to, undermine his independence or the quality of his report;

(2) ensure that the reattribution expert's terms of appointment allow him to communicate freely and in confidence with the FSA; and

(3) require the reattribution expert to prepare a report which must be available to the FSA, the policyholder advocate and the court (if it is relevant to any court proceedings).

20.2.48 G A reattribution expert's report should comply with the applicable rules on expert evidence. The scope and content of the report should be substantially similar to that of the report required of an independent expert under SUP 18.2 (Insurance business transfers), as if (where appropriate) a reference to:

(1) the 'scheme report' was a reference to the 'reattribution expert's report';

(2) the 'independent expert' was a reference to the 'reattribution expert'; and

(3) the 'scheme' was a reference to the proposal for a 'reattribution'.

Process for reattribution of inherited estates: Information to policyholders

20.2.49 R A firm must ensure that every policyholder that may be affected by the proposed reattribution is sent appropriate and timely information about:

(1) the reattribution process, including the role of the policyholder advocate, the independent expert or reattribution expert, as the case may be, and other individuals appointed to perform particular functions;

(2) the reattribution proposals and how they affect the relevant policyholders, including an explanation of any benefits they are likely to receive and the rights and interests that they are likely to be asked to give up;

(3) the policyholder advocate's views on the reattribution proposals and any benefits the relevant policyholders are likely to receive and the rights and interests that they are likely to be asked to give up; and

(4) the outcome of the negotiations between the firm and the policyholder advocate about the benefits that will be offered to relevant with-profits policyholders, in exchange for the rights and interests that they will be asked to give up.

20.2.50 R An adequate summary of the report by the reattribution expert must be
made available to every policyholder that may be affected by the proposed reattribution.

Process for reattribution of inherited estates: Consent of policyholders

20.2.51 R A firm must give relevant with-profits policyholders the option to:

(1) individually accept or reject the final proposals for the reattribution; or

(2) (if the legal process to be followed allows the majority of policyholders to bind the minority) vote on whether the firm should go ahead with those proposals.

Process for reattribution of inherited estates: Costs

20.2.52 G (1) Reattribution and insurance business transfer costs (excluding policyholder advocate costs) should be met from shareholder funds. A firm may present alternative arrangements if it can show good reasons for doing so.

(2) Shareholders should pay a reasonable proportion of the policyholder advocate's costs.

(3) If a reattribution proposal is not successful, the FSA would expect the costs of the policyholder advocate to be met by the person initiating the proposal. That will usually be the shareholders of the firm.

Ceasing to effect new contracts of insurance in a with-profits fund

20.2.53 R A firm must:

(1) inform the FSA and its with-profits policyholders within 28 days; and

(2) submit a run-off plan to the FSA as soon as reasonably practicable and, in any event, within three months;

of first ceasing to effect new contracts of insurance in a with-profits fund.

20.2.54 R A firm will be taken to have ceased to effect new contracts of insurance in a with-profits fund:

(1) when any decision by the governing body to cease to effect new contracts of insurance takes effect; or

(2) where no such decision is made, when the firm is no longer:

(a) actively seeking to effect new contracts of insurance in that fund; or

(b) effecting new contracts of insurance in that fund, except by
increment.

20.2.55 R A firm must contact the FSA to discuss whether it has, or should be taken to have, ceased to effect new contracts of insurance if:

(1) it is no longer effecting a material volume of new with-profits policies in a particular with-profits fund, other than by reinsurance; or

(2) it cedes by way of reinsurance most of the new with-profits policies which it continues to effect.

20.2.56 R The run-off plan required by this section must:

(1) demonstrate how the firm will ensure a fair distribution of the closed with-profits fund, and its inherited estate (if any); and

(2) be approved by the firm's governing body.

20.2.57 G A firm should also include the information described in Appendix 2.15 (Run-off plans for closed with-profits funds) of the Supervision manual in its run-off plan.

20.2.58 G When a firm tells its with-profits policyholders that it has ceased to effect new contracts of insurance in a with-profits fund, it should also explain:

(1) why it has done so;

(2) what changes it has made, or proposes to make, to the fund's investment strategy (if any);

(3) how closure may affect with-profits policyholders (including any reasonably foreseeable effect on future bonus prospects);

(4) the options available to with-profits policyholders and an indication of the potential costs associated with the exercise of each of those options; and

(5) any other material factors that a policyholder may reasonably need to be aware of before deciding how to respond to this information.

20.2.59 G A firm may not be able to provide its with-profits policyholders with all of the information described above until it has prepared the run-off plan. In those circumstances, the firm should:

(1) tell its with-profits policyholders that that is the case;

(2) explain what is missing and give a time estimate for its supply; and

(3) provide the missing information as soon as possible, and within the time estimate given.
If non-profit insurance business is written in a with-profits fund, a firm should take reasonable steps to ensure that the economic value of any future profits expected to emerge on the non-profit insurance business is available for distribution during the lifetime of the with-profits business.

Where it is agreed by its with-profits policyholders, and subject to meeting the requirements for effecting new contracts of insurance in an existing with-profits fund (COBS 20.2.28R), a mutual may make alternative arrangements for continuing to carry on non-profit insurance business, and a non-directive friendly society may make alternative arrangements for continuing to carry on non-insurance related business.

### Principles and Practices of Financial Management

**Production of PPFM**

20.3.1 A firm must:

(a) establish and maintain the PPFM according to which its with-profits business is conducted (or, if appropriate, separate PPFM for each with-profits fund); and

(b) retain a record of each version of its PPFM for five years.

20.3.1 (2) A firm's with-profits principles must:

(a) be enduring statements of the standards it adopts in managing with-profits funds; and

(b) describe the business model it uses to meet its duties to with-profits policyholders and to respond to longer-term changes in the business and economic environment.

20.3.1 (3) A firm's with-profits practices must:

(a) describe how a firm manages its with-profits funds and how it responds to shorter-term changes in the business and economic environment; and

(b) be sufficiently detailed for a knowledgeable observer to understand the material risks and rewards from effecting or maintaining a with-profits policy with it.

20.3.1 (4) A firm must not change its PPFM unless, in the reasonable opinion of its governing body, that change is justified to:

(a) respond to changes in the business or economic environment;
or

(b) protect the interests of policyholders; or

(c) change the firm's with-profits practices better to achieve its with-profits principles.

(5) A firm may change its PPFM if that change:

(a) is necessary to correct an error or omission; or

(b) would improve clarity or presentation without materially affecting the PPFM's substance; or

(c) is immaterial.

Governance arrangements for with-profits business

20.3.2 G In complying with the rule on systems and controls in relation to compliance, financial crime and money laundering (SYSC 3.2.6R), a firm should maintain governance arrangements designed to ensure that it complies with, maintains and records any applicable PPFM. These arrangements should:

(1) be appropriate to the scale and complexity of the firm's with-profits business;

(2) include the approval of the firm's PPFM by its governing body; and

(3) involve some independent judgment in assessing compliance with its PPFM and addressing conflicting rights and interests of policyholders and, if applicable, shareholders, which may include but is not confined to:

(a) establishing a with-profits committee;

(b) asking an independent person with appropriate skills and experience to report on these matters to the governing body or to any with-profits committee; or

(c) for small firms, asking one or more non-executive members of the governing body to report to the governing body on these matters.

20.3.3 G If a person or committee who provides the independent judgement wishes to make a statement or report to with-profits policyholders, in addition to any annual report made by a firm to those policyholders, a firm should facilitate this.

Scope and content of PPFM

20.3.4 R A firm's PPFM must cover the issues set out in the table in COBS 20.3.6R.
20.3.5 R A firm's PPFM must cover any matter that has, or it is reasonably foreseeable may have, a significant impact on the firm's management of with-profits funds, including but not limited to:

1. any requirements or constraints that apply as a result of previous dealings, including previous business transfer schemes; and

2. the nature and extent of any shareholder commitment to support the with-profits fund.

20.3.6 R Table: Issues to be covered in PPFM

<table>
<thead>
<tr>
<th>Subject</th>
<th>Issues</th>
</tr>
</thead>
</table>
| (1) Amount payable under a with-profits policy | (a) Methods used to guide determination of the amount that is appropriate to pay individual with-profits policyholders, including:

(i) the aims of the methods and approximations used;

(ii) how the current methods, including any relevant historical assumptions used and any systems maintained to deliver results of particular methods, are documented; and

(iii) the procedures for changing the current method or any assumptions or parameters relevant to a particular method.

(b) Approach to setting bonus rates.

(c) Approach to smoothing maturity payments and surrender payments, including:

(i) the smoothing policy applied to each type of with-profits policy;

(ii) the limits (if any) applied to the total cost of, or excess from, smoothing; and

(iii) any limits applied to any changes in the level of maturity payments between one period to another. |
| (2) Investment strategy | Significant aspects of the firm's investment strategy for its with-profits business or, if different, any with-

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<table>
<thead>
<tr>
<th>Subject</th>
<th>Issues</th>
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</thead>
<tbody>
<tr>
<td>profits fund, including:</td>
<td>(a) the degree of matching to be maintained between assets relevant to <em>with-profits business</em> and liabilities to <em>with-profits policyholders</em> and other creditors;</td>
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<td>(b) the <em>firm's</em> approach to assets of different credit or liquidity quality and different volatility of market values;</td>
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<td>(c) the presence among the assets relevant to <em>with-profits business</em> of any assets that would not normally be traded because of their importance to the <em>firm</em>, and the justification for holding such assets; and</td>
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<td></td>
<td>(d) the <em>firm's</em> controls on using new asset or liability instruments and the nature of any approval required before new instruments are used.</td>
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<tr>
<td>Business risk</td>
<td>The exposure of the <em>with-profits business</em> to business risks (new and existing), including the <em>firm's</em>:</td>
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<tr>
<td></td>
<td>(a) procedures for deciding if the <em>with-profits business</em> may undertake a particular business risk;</td>
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<td></td>
<td>(b) arrangements for reviewing and setting a limit on the scale of such risks; and</td>
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<td></td>
<td>(c) procedures for reflecting the profits or losses of such business risks in the amounts payable under <em>with-profits policies</em>.</td>
</tr>
<tr>
<td>Charges and expenses</td>
<td>(a) The way in which the <em>firm</em> applies charges and apportions expenses to its <em>with-profits business</em>, including, if material, any interaction with connected firms.</td>
</tr>
<tr>
<td></td>
<td>(b) The cost apportionment principles that will determine which costs are, or may be, charged to a <em>with-profits fund</em> and which costs are, or may be, charged to the other parts of its business of its shareholders.</td>
</tr>
<tr>
<td>Management of inherited</td>
<td>Management of any <em>inherited estate</em> and the uses to which the <em>firm</em> may put that <em>inherited estate</em>.</td>
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<tr>
<td>Subject</td>
<td>Issues</td>
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<td><strong>estate</strong></td>
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<td><strong>(6) Volumes of new business and arrangements on stopping taking new business</strong></td>
<td>If a firm's with-profits fund is accepting new with-profits business, its practice for review of the limits on the quantity and type of new business and the actions that the firm would take if it ceased to take on new business of any significant amount.</td>
</tr>
<tr>
<td><strong>(7) Equity between the with-profits fund and any shareholders</strong></td>
<td>The way in which the interests of with-profits policyholders are, or may be, affected by the interests of any shareholders of the firm.</td>
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</table>

20.3.7 G The table in COBS 20.3.8R sets out guidance on how various information relevant to some of the issues covered in a firm's PPFM (COBS 20.3.6R) might be split between with-profits principles and with-profits practices. This is an example of the matters a firm should address in its with-profits principles and with-profits practices and is not exhaustive. A firm should consider carefully the scope and content of its PPFM as appropriate.

20.3.8 G | Table: Guidance on with-profits principles and practices |
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>With-profits principles</strong></td>
<td><strong>With-profits practices</strong></td>
</tr>
<tr>
<td><strong>Reference to PPFM issues (COBS 20.3.6R)</strong></td>
<td>General</td>
</tr>
<tr>
<td><strong>(1) Amount payable under a with-profits policy</strong></td>
<td>(a) Circumstances under which any historical assumptions or parameters, relevant to methods used to determine the amount payable, may be changed;</td>
</tr>
<tr>
<td></td>
<td>(f) Degree of approximation allowed when assumptions or parameters are applied</td>
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<tr>
<td>Reference to PPFM issues (COBS 20.3.6R)</td>
<td>With-profits principles</td>
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<tr>
<td>Reference to PPFM issues (COBS 20.3.6R)</td>
<td>With-profits principles</td>
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<tr>
<td>Bonus rates</td>
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<tr>
<td>(b) General aims in setting bonus rates and the constraints to which the <em>firm</em> may be subject in changing economic circumstances;</td>
<td>(k) Current approach to setting bonus rates, including the weight given to recent economic experience. For final bonus rates, the description should include any distinctions made between <em>with-profits policies</em> that remain in force until contractual dates, or dates on which no market value reduction applies (for example, maturity or retirement dates) and policies that are surrendered or transferred at other dates;</td>
</tr>
<tr>
<td>(c) How the range of <em>with-profits policies</em> or generations of <em>with-profits policies</em> over which the <em>firm</em> believes a single bonus rate would be appropriate is determined and the circumstances under which it believes a new bonus series would be necessary;</td>
<td>(l) Frequency at which</td>
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<tr>
<td>Reference to PPFM issues (COBS 20.3.6R)</td>
<td>With-profits principles</td>
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<td>----------------------------------------</td>
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<tr>
<td>and</td>
<td>bonus rates are re-set or expected to be re-set and the circumstances under which changes in the economic environment would cause the time between re-setting to change;</td>
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<tr>
<td>(m) Maximum amount by which annual bonuses would alter if annual bonus rates were reset;</td>
<td></td>
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<tr>
<td>(n) Approach to setting any interim bonus rates before the next declaration of annual bonus rates;</td>
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<tr>
<td>(o) Relationship or interaction between final bonus rates and any market value reductions, if both can apply at the same time;</td>
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<tr>
<td>(p) How final bonus rates influence the value of with-profits policies that have formulaic surrender or transfer bases (for example, older conventional policies rather than unitised policies); and</td>
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<tr>
<td>Smoothing</td>
<td>Smoothing</td>
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<tr>
<td>(d) Statement as to whether smoothing is intended to be neutral over time.</td>
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<tr>
<td>(q) Any differences in approach for:</td>
<td></td>
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<tr>
<td>(i) the various types of with-profits policy;</td>
<td></td>
</tr>
<tr>
<td>Reference to PPFM issues (COBS 20.3.6R)</td>
<td>With-profits principles</td>
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<td>----------------------------------------</td>
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<td></td>
<td>(ii) different categories of payout, such as between surrendered policies and maturing policies; and (iii) different generations of <em>with-profits policyholders</em>.</td>
</tr>
<tr>
<td>(2) Investment strategy</td>
<td>(a) How the types, classes or mix of assets are determined; and (b) Strategy in respect of derivatives and other instruments.</td>
</tr>
<tr>
<td>(3) Business risk</td>
<td>(a) Where a <em>firm</em> explicitly excludes business risk from a class of <em>with-profits policies</em> but there are residual risks, clarification where these risks such as guarantee and smoothing costs are</td>
</tr>
<tr>
<td>Reference to PPFM issues (COBS 20.3.6R)</td>
<td>With-profits principles</td>
</tr>
<tr>
<td>---------------------------------------</td>
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</tr>
<tr>
<td>(b) Define where compensation costs from a business risk would be borne.</td>
<td>bear particular business risks, including for example, crystallised or contingent guarantees to other classes of policyholders or whether the out-turn from all business risk is pooled across all with-profits policies.</td>
</tr>
<tr>
<td>(4) Charges and expenses (a) Factors that would drive any change to the basis on which the firm applies charges to or apportions its actual expenses amongst with-profits policies, or exercises any discretion to apply charges to particular with-profits policies.</td>
<td>(b) Charges currently applied and the expenses currently apportioned to major classes of with-profits policies; (c) Relationship between the firm's actual charges and expenses, as applied to determine the amounts payable under with-profits policies, and the charges and expenses borne by the with-profits fund; (d) Circumstances under which expenses will be charged to the with-profits fund at an amount other than cost, and the reasons why; and (e) Interval for reviewing any arrangements for out-sourced services, including those provided by connected parties, giving a broad indication of the terms</td>
</tr>
<tr>
<td>Reference to PPFM issues (COBS 20.3.6R)</td>
<td>With-profits principles</td>
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<td>----------------------------------------</td>
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<tr>
<td>(5) Management of inherited estate</td>
<td>(a) Preferred size or scale of inherited estate and implications for the values of the with profits policies; and</td>
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<td></td>
<td>(b) Any existing division of the inherited estate between with-profits funds; and</td>
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<tr>
<td></td>
<td>(c) Any constraints on the freedom to deal with the inherited estate as a result of previous dealings.</td>
</tr>
<tr>
<td>(7) Equity between the with-profits fund and any shareholders</td>
<td>(a) Arrangements for, and any changes to, profit sharing between shareholders and with-profits policyholders.</td>
</tr>
<tr>
<td></td>
<td>(c) Whether the pricing of any policies being written, and particular policies open to new business, appear to be significantly and systematically reducing the inherited estate if the shareholder transfer is taken into account.</td>
</tr>
</tbody>
</table>
20.4 Communications with with-profits policyholders

Provision and publication of PPFM

20.4.1 R A firm must:

(1) on request, provide its PPFM, or the PPFM applicable to specified with-profits funds:

(a) free of charge to its with-profits policyholders; or

(b) for a reasonable charge to any person who is not its with-profits policyholder; and

(2) if the firm publishes its PPFM on its website, prominently signpost its location there.

Notification of changes

20.4.2 R A firm must send its with-profits policyholders who are affected by any change in its PPFM, written notice, setting out any:

(1) proposed changes to the with-profits principles, three months in advance of the effective date; and

(2) changes to the with-profits practices, within a reasonable time.

20.4.3 R A firm need not give the notice required if the change to its PPFM:

(1) is necessary to correct an error or omission; or

(2) would improve clarity or presentation without materially affecting the PPFM’s substance; or

(3) is immaterial.

Requirements on EEA insurers

20.4.4 R In relation to any with-profits policyholder who is habitually resident in the United Kingdom, an EEA insurer must:

(1) on request, provide the information necessary to enable that policyholder properly to understand the insurer's commitment under the policy;

(2) ensure that the information provided is not narrower in scope or less detailed in content than the equivalent PPFM; and

(3) send the policyholder who is affected by any information being
changed written notice, setting out:

(a) any proposed changes to information that is equivalent to the
    with-profits principles, three months in advance of the
effective date; and

(b) any changes to information that is equivalent to the with-
    profits practices, within a reasonable time.

Consumer-friendly PPFM

20.4.5  R A firm must:

(1) produce a CFPPFM describing the most important information set
    out under each of the headings in its PPFM and keep it up to date as
    the PPFM changes over time;

(2) express its CFPPFM in clear and plain language that can be easily
    understood by a with-profits policyholder, or potential with-profits
    policyholder who does not possess any specialist or technical
    knowledge;

(3) provide its CFPPFM free of charge with any:

    (a) written notice sent to with-profits policyholders on proposed
        changes to its with-profits principles (where the firm must
        provide the version of the CFPPFM in use before the
        changes if this has not already been provided);

    (b) annual statements sent to its with-profits policyholders
        (unless there has been no material change in the CFPPFM
        since it was last supplied); and

    (c) key facts disclosure document for a with-profits policy; and

(4) make its CFPPFM publicly available and prominently signpost the
    availability on its website.

20.4.6  G A firm may include the information set out in its CFPPFM in any other
document it produces.

Annual report to with-profits policyholders

20.4.7  R A firm must produce an annual report to its with-profits policyholders,
which must:

(1) state whether, throughout the financial year to which the report
    relates, the firm believes it has complied with its obligations relating
to its PPFM and setting out its reasons for that belief;

(2) address all significant relevant issues, including the way in which the
    firm has:
(a) exercised, or failed to exercise, any discretion that it has in the conduct of its *with-profits business*; and

(b) addressed any competing or conflicting rights, interests or expectations of its *policyholders* (or groups of *policyholders*) and, if applicable, *shareholders* (or groups of *shareholders*), including the competing interests of different classes and generations.

20.4.8 **G** The following documents should be annexed to the annual report in this section:

1. the report to *with-profits policyholders* made by a *with-profits actuary* in respect of each financial year (see SUP 4.3.16AR(4)); and

2. any statement or report provided by the *person* or committee who provides the independent judgement under the firm's governance arrangements for its *with-profits business*.

20.4.9 **G** In preparing the annual report to *with-profits policyholders*, a *firm* should take advice from a *with-profits actuary*.

20.4.10 **G** A *firm* should make the annual report available to *with-profits policyholders* within six *months* of the end of the *financial year* to which it relates. A *firm* should notify its *with-profits policyholders* in any annual statements how copies of the report can be obtained.
Transitional Provisions

COBS TP 1: Transitional Provisions relating to Client Categorisation

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
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<th>(5)</th>
<th>(6)</th>
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</thead>
<tbody>
<tr>
<td>Overview of transitional provisions for client categorisation</td>
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</tr>
</tbody>
</table>

1.1 **COBS 3** G

(1) *COBS* TP 1.2 contains default transitional categorisation provisions in relation to the existing *clients* of a *firm* on 1 November 2007. In many cases, they allow a *client* to be automatically provided with the nearest equivalent categorisation under *COBS 3* to their previous categorisation.

(2) *COBS* TP 1.3 explains how the transitional provisions for *client* categorisation relate to the requirement for a *firm* to act if it becomes aware that an *elective professional client* no longer satisfies the initial conditions for its categorisation.

(3) The default provisions do not prevent a *firm* categorising such a *client* differently in accordance with *COBS 3*. *COBS* TP 1.4 provides guidance on how some of the procedural requirements in *COBS 3* apply in some such cases.

(4) *COBS* TP 1.5 contains transitional notification obligations, which apply if the default provisions do not allow that *client* to be provided with the nearest equivalent categorisation from 1 November 2007 indefinitely.

| | | | | | 1 November 2007 |
| | | | | | |
| | | | | | |
or a firm chooses not to take advantage of those provisions in relation to a client.

(5) COBS TP 1.6 contains a transitional notification obligation that applies to a firm that, in relation to MiFID or equivalent third country business, takes advantage of the default transitional categorisation provisions to classify a client as a per se professional client.

<table>
<thead>
<tr>
<th>Categorisation of existing clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2 COBS 3 R</td>
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<table>
<thead>
<tr>
<th>From 1 November 2007</th>
<th>1 November 2007</th>
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<tbody>
<tr>
<td>indefinitely</td>
<td>1 November 2007</td>
</tr>
</tbody>
</table>
(a) for eligible counterparty business that is not MiFID or equivalent third country business, an eligible counterparty; and

(b) otherwise, a per se professional client;

unless and to the extent it is given a different categorisation by the firm under COBS 3.

[Note: Article 71(6) of, and third paragraph of section II.2 of Annex II to, MiFID]

| 1.3 | COBS 3 | G | Under COBS 3.5.9R, 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. In the case of a client that has been classified as an elective professional client under COBS TP 1.2R(2)(a), the initial conditions are those that applied to the client's initial categorisation as an intermediate customer. | From 1 November 2007 indefinitely | 1 November 2007 |
| Former inter-professional business |

| 1.4 | COBS 3 | G | The requirement to provide notices under COBS 3.3.1R only applies in relation to new clients. 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 client with whom a firm conducted inter-professional business before 1 November 2007 is categorised as an eligible counterparty under COBS 3 in relation to eligible counterparty business. | From 1 November 2007 indefinitely | 1 November 2007 |
| 1.5 | COBS 3 | R | (1) If a *firm* does not categorise a *client* that was a *private customer* immediately before 1 November 2007 as a *retail client*, it must notify that *client* of its categorisation as a *professional client* or *eligible counterparty*, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that *client*.

(2) If a *firm* does not categorise a *client* that was an *intermediate customer* immediately before 1 November 2007 as a *professional client*, it must notify that *client* of its categorisation as a *retail client* or *eligible counterparty*, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that *client*.

(3) If a *firm* does not categorise a *client* that was a *market counterparty* immediately before 1 November 2007 as an *eligible counterparty*, it must notify that *client* of its categorisation as a *retail client* or *professional client* on or before that date, or if later, before conducting any further business to which COBS applies for that *client*.

[Note: article 28(1) of the MiFID implementing Directive]

From 1 November 2007 indefinitely | 1 November 2007 |

| 1.6 | COBS 3 | R | If a *firm*, in relation to MiFID or equivalent third country business, categorises a *client* who would not otherwise have been a *professional client* as a *professional client* under COBS TP 1.2(2)(b) or (3)(b), it must |

From 1 November 2007 indefinitely | 1 November 2007 |
1.7 | G | A notice to a professional client under COBS TP 1.6 should inform that client:

(a) that they have been categorised as a professional client; and

(b) of the main differences between the treatment of a retail client and a professional client.

From 1 November 2007 indefinitely | 1 November 2007

1.8 | R | The record-keeping requirements under COBS 3.8.2R apply in relation to any client categorisations or re-categorisations made under the transitional provisions for COBS 3.

From 1 November 2007 indefinitely | 1 November 2007

COBS TP 2: Other Transitional Provisions

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional Provision</td>
<td>Transitional Provision: dates in force</td>
<td>Handbook provision: coming into force</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>COBS 6.1</td>
<td>G</td>
<td>(1) If a firm provides services of an ongoing nature to an existing client it need not provide information to that client that it would be required to provide under COBS to a new client but which it was not required to</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
</tr>
</tbody>
</table>
(2) Services of an ongoing nature include safekeeping and administration and managing investments.

<table>
<thead>
<tr>
<th>Section</th>
<th>Rule</th>
<th>Type</th>
<th>Description</th>
<th>Date from</th>
<th>Date to</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2</td>
<td>COBS 6.1</td>
<td>G</td>
<td>(1) If a firm provides a service for an existing client that is not of an ongoing nature and which relates to the same particular type of designated investment as a previous service, the firm need not provide information to that client that it would be required to provide under COBS 6.1 to a new client but which it was not required to provide under COB. (2) But a firm should ensure that the client has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those described in respect of a previous transaction.</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
</tr>
<tr>
<td>2.3</td>
<td>COBS 10.1.2R</td>
<td>R</td>
<td>For business which is not MiFID or equivalent third country business, compliance with COB 3.9.5R(2) (Prohibited types of direct offer financial promotion) as it was in force on 31 October 2007 is treated as compliance with COBS 10.1.2R (arranging or dealing in certain derivatives and warrants for retail clients).</td>
<td>From 1 November 2007 to 31 May 2008</td>
<td>1 November 2007</td>
</tr>
<tr>
<td>2.4</td>
<td>COBS 10.1.2R</td>
<td>G</td>
<td>This transitional (TP 2.3R) relates to non-MiFID or equivalent third country business arising out of a direct offer financial promotion of a derivative or warrant (or both) for a retail client. This would include, for example, sports or political spread betting. For such business, a firm may begin to comply with the new appropriateness rules at any time within six months of 1 November</td>
<td>From 1 November 2007 to 31 May 2008</td>
<td>1 November 2007</td>
</tr>
</tbody>
</table>
so long as, in the meantime, it complies with COB 3.9.5R(2).

| 2.5 | COBS 13 | R | A firm is not required to prepare a key features document or the Consolidated Life Directive information for a product if:
| | | | (1) the rules would have required the firm to prepare key features for the product if they were still in force; and
| | | | (2) the firm prepares key features in accordance with the rules as if they were still in force.
| | | | For these purposes, ‘the rules’ are the rules on product disclosure and the customer’s right to cancel or withdraw (COB 6) that were in force on 31 October 2007.
| | | | From 1 November 2007 until 31 October 2008
| | | | 1 November 2007

| 2.6 | COBS 14.1 and COB 14.2 | R | A firm is not required to provide a key features document or the Consolidated Life Directive information for a product if:
| | | | (1) the rules would have required the firm to provide key features for that product if they were still in force;
| | | | (2) the firm is satisfied, on reasonable grounds, that providing key features in accordance with the rules, as if they were still in force, will not cause:
| | | | (a) a client to suffer any prejudice; or
| | | | (b) the firm to breach its obligations under one or more of the Principles; and
| | | | (3) the firm provides key features for the product in accordance with the rules as if they were still in force.
| | | | From 1 November 2007 until 31 October 2008
| | | | 1 November 2007
For these purposes, ‘the rules’ means the rules on product disclosure and the customer’s right to cancel or withdraw (COB 6) that were in force on 31 October 2007.

<table>
<thead>
<tr>
<th>Section</th>
<th>Sourcebook</th>
<th>Action</th>
<th>Description</th>
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<tbody>
<tr>
<td>2.7</td>
<td>COBS 15</td>
<td>Cancellation</td>
<td>(1) In relation to a contract concluded before 1 November 2007 the previous cancellation rules (COB 6.7) continue to apply. (2) In relation to a contract concluded on or after 1 November 2007 any pre-contract disclosure made before that date that complies with the requirements of this sourcebook is to be treated for the purposes of COBS 15 as if made under this sourcebook.</td>
</tr>
<tr>
<td>2.8</td>
<td>COBS 16.3 (Periodic statements)</td>
<td>Rule</td>
<td>This transitional rule applies in relation to a periodic reporting period for a periodic statement that includes 1 November 2007. A firm may choose to comply with either COBS 16.3 or COB 8.2 in providing any periodic report in relation to which this rule applies.</td>
</tr>
<tr>
<td>2.9</td>
<td>COBS 20.2.1G – 20.2.41G; COBS 20.2.53R – 20.2.60G (Treating with-profits policyholders fairly)</td>
<td>Rule</td>
<td>The provisions listed in column (2) do not apply to a firm if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the FSA, a previous regulator or a court of competent jurisdiction, on or before 20 January 2005.</td>
</tr>
<tr>
<td>2.10</td>
<td>COBS 20.2.42R (3) (Policyholder advocate: appointment and role)</td>
<td>Rule</td>
<td>The provision listed in column (2) does not apply to a firm if it is already carrying out a reattribution and the process is substantially underway to the extent that it has on or before 31 October 2007 appointed a policyholder advocate.</td>
</tr>
</tbody>
</table>
2.11  |  COBS TP 2.9  |  G  |  The *rules* and *guidance* on treating with-profits policyholders fairly (*COBS 20.2.1G – 20.2.41G; COBS 20.2.53R – 20.2.60G*) may be contrary to, or inconsistent with, some arrangements that were formally approved by the FSA, a *previous regulator* or a court of competent jurisdiction, on or before 20 January 2005. The effect of TP 2.9 is that these *rules* do not apply to such arrangements if, and to the extent that, it is inconsistent with them.

A *firm* should be mindful, however, that, even if some or all of these *rules* are disapplied, the *firm* is still subject to the *rules* in the rest of the *Handbook*, including *Principle 6*.

| From 1 November 2007 indefinitely | 1 November 2007 |
COBS Schedules

| Schedule 1:   | Record keeping requirements | [to follow] |
| Schedule 2:   | Notification requirements   | [to follow] |
| Schedule 3:   | Fees and other required payments | [to follow] |
| Schedule 4:   | Powers exercised            | [to follow] |
| Schedule 5:   | Rights of action for damages | [to follow] |
| Schedule 6:   | Rules that can be waived    | [to follow] |