

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:

Chapter	Chapter Title	Sections made
1	Application	Section 1.1
2	Conduct of business obligations	Sections 2.1 to 2.4
3	Client categorisation	Sections 3.1 to 3.8
4	Communicating with clients, including financial promotions	Sections 4.1 to 4.11
5	Distance communications	Sections 5.1 to 5.2
6	Information about the firm, its services and remuneration	Section 6.1
7	Insurance mediation	Sections 7.1 to 7.2
8	Client agreements	Section 8.1
9	Suitability (including basic advice)	Sections 9.1 to 9.3, and 9.5 to 9.6 (Section 9.4 to follow)
10	Appropriateness (for non-advised services)	Sections 10.1 to 10.7
11	Dealing and managing	Sections 11.1 to 11.5, and 11.7 (Section 11.6 to follow)
12	Investment research	Sections 12.1 to 12.4
13	Preparing product information	Sections 13.1 to 13.3
14	Providing product information	Sections 14.1 and 14.3 (Section 14.2 to follow)
15	Cancellation	Sections 15.1 to 15.5
16	Reporting information to clients	Sections 16.1 to 16.6
17	Claims handling for long-term care insurance	Section 17.1
18	[Specialist regimes]	[To follow]
19	Pensions – supplementary provisions	Sections 19.1 to 19.4
20	With-profits	Sections 20.1 to 20.4
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

1.	Eligible counterparty business																					
1.1	R	<p>The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> that is <i>MiFID</i> or equivalent third country business.</p> <table border="1"> <thead> <tr> <th>COBS provision</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td><i>COBS</i> 2 (other than <i>COBS</i> 2.4)</td> <td>Conduct of business obligations</td> </tr> <tr> <td><i>COBS</i> 4 (other than <i>COBS</i> 4.2.5R and <i>COBS</i> 4.2.6G)</td> <td>Communicating with clients including financial promotions</td> </tr> <tr> <td><i>COBS</i> 6.1</td> <td>Information about the firm, its services and remuneration</td> </tr> <tr> <td><i>COBS</i> 8</td> <td>Client agreements</td> </tr> <tr> <td><i>COBS</i> 10</td> <td>Appropriateness (for non-advised services)</td> </tr> <tr> <td><i>COBS</i> 11.2, <i>COBS</i> 11.3 and <i>COBS</i> 11.6</td> <td>Best execution, client order handling and use of dealing commission</td> </tr> <tr> <td><i>COBS</i> 12.3.1R to 12.3.3R</td> <td>Labelling of non-independent research</td> </tr> <tr> <td><i>COBS</i> 14.3</td> <td>Information about designated investments</td> </tr> <tr> <td><i>COBS</i> 16</td> <td>Reporting information to clients</td> </tr> </tbody> </table> <p>[Note: article 24(1) of <i>MiFID</i>]</p>	COBS provision	Description	<i>COBS</i> 2 (other than <i>COBS</i> 2.4)	Conduct of business obligations	<i>COBS</i> 4 (other than <i>COBS</i> 4.2.5R and <i>COBS</i> 4.2.6G)	Communicating with clients including financial promotions	<i>COBS</i> 6.1	Information about the firm, its services and remuneration	<i>COBS</i> 8	Client agreements	<i>COBS</i> 10	Appropriateness (for non-advised services)	<i>COBS</i> 11.2, <i>COBS</i> 11.3 and <i>COBS</i> 11.6	Best execution, client order handling and use of dealing commission	<i>COBS</i> 12.3.1R to 12.3.3R	Labelling of non-independent research	<i>COBS</i> 14.3	Information about designated investments	<i>COBS</i> 16	Reporting information to clients
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2.	Transactions between an MTF operator and its users																					
2.1	R	<p>The <i>COBS</i> provisions in paragraph 1.1R and <i>COBS</i> 11.4 (Client limit orders) do not apply to a transaction between an operator of an <i>MTF</i> and a member or participant in relation to the use of the <i>MTF</i>.</p> <p>[Note: article 14(3) of <i>MiFID</i>]</p>																				
3.	Transactions concluded on an MTF																					
3.1	R	<p>The <i>COBS</i> provisions in paragraph 1.1R and <i>COBS</i> 11.4 (client limit orders) do not apply to transactions concluded under the rules governing an <i>MTF</i> between members or participants of the <i>MTF</i> (where the transactions are <i>MiFID</i> or equivalent third country business). However, the member or</p>																				

		<p>participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on an <i>MTF</i>.</p> <p>[Note: article 14(3) of <i>MiFID</i>]</p>
4.	Transactions concluded on a regulated market	
4.1	R	<p>In relation to transactions concluded on a <i>regulated market</i> (where the transactions are <i>MiFID</i> or <i>equivalent third country business</i>), members and participants of the <i>regulated market</i> are not required to apply to each other the <i>COBS</i> provisions in paragraph 1.1R and <i>COBS</i> 11.4 (client limit orders). However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on a <i>regulated market</i>.</p> <p>[Note: article 42(4) of <i>MiFID</i>]</p>
5.	Consumer credit products	
5.1	R	<p>If a <i>firm</i>, in relation to its <i>MiFID</i> business, offers an <i>investment service</i> as part of a financial product that is subject to other provisions of European Community legislation or common European standards related to <i>credit institutions</i> and consumer credits with respect to risk assessments of clients and/or information requirements, that service is not subject to the <i>rules</i> in this sourcebook that implement Article 19 of <i>MiFID</i>.</p> <p>[Note: article 19(9) of <i>MiFID</i>]</p>
5.2	G	<p>This exclusion for consumer credit products is intended to apply on a narrow basis in relation to cases in which the <i>investment service</i> is a part of another financial product. It does not apply where the <i>investment service</i> is the essential or leading part of the financial product. It also does not apply where the service provided is a combination of an <i>investment service</i> and an <i>ancillary service</i> (for example, granting a credit for the execution of an order where the credit is instrumental to the buying or the selling of a <i>financial instrument</i>.) The exclusion also does not apply in relation to the sale of a <i>financial instrument</i> for the purpose of enabling a <i>client</i> to invest money to repay his obligations under a loan, <i>mortgage</i> or <i>home reversion</i>.</p>

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 <i>guidance</i> on this).
		(2)	This <i>rule</i> overrides every other <i>rule</i> in this sourcebook.

1.2	R	<p>In addition to the <i>EEA territorial scope rule</i>, the effect of the <i>Electronic Commerce Directive</i> 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 <i>guidance</i> on this).</p> <p>[Note: article 3(3) of, and Annex to, the <i>Electronic Commerce Directive</i>]</p>	
2.	Business with UK clients from overseas establishments		
2.1	R	(1)	This sourcebook applies to a <i>firm</i> which carries on business with a <i>client</i> in the <i>United Kingdom</i> 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 <i>person</i> and the activity:
		(a)	would fall within the overseas <i>persons</i> exclusions in article 72 of the <i>Regulated Activities Order</i> ; or
		(b)	would not be regarded as carried on in the <i>United Kingdom</i> .
2.2	G	<p>One of the effects of the <i>EEA territorial scope rule</i> is to override the application of this sourcebook to the overseas establishments of <i>EEA firms</i> in a number of cases, including circumstances covered by <i>MiFID</i>, the <i>Distance Marketing Directive</i> or the <i>Electronic Commerce Directive</i>. See Part 3 for <i>guidance</i> on this.</p>	

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 <i>rules</i> in this Part of the Annex affects the operation of:	
		(1)	<i>COBS</i> 4 (Communicating with clients including financial promotions) and <i>COBS</i> 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 <i>rules</i> that implement <i>MiFID</i> to the <i>equivalent business of a third country investment firm</i> .
1.2	G	<p>For example, this Part would not affect the application of the provisions in this sourcebook that implement <i>MiFID</i> in relation to <i>MiFID or equivalent third country business</i>. This is the case even if such business falls within</p>	

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

Part 3: Guidance

1.	The main extensions and restrictions to the general application rule	
1.1	G	The <i>general application rule</i> is modified in Parts 1 to 2A of Annex 1 and in certain chapters of the <i>Handbook</i> . The modification may be an extension of this <i>rule</i> . For example, <i>COBS 4</i> (Communications to clients) and <i>COBS 5</i> (Financial promotion) have extended the application of the rule.
1.2	G	The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the <i>general application rule</i> , particularly in relation to territorial scope. However, for the majority of circumstances, the <i>general application rule</i> is likely to apply.
2.	The Single Market Directives and other directives	
2.1	G	This <i>guidance</i> provides a general overview only and is not comprehensive.
2.2	G	When considering the impact of a directive on the territorial application of a <i>rule</i> , a <i>firm</i> will first need to consider whether the relevant situation involves a non-UK element. The <i>EEA territorial scope rule</i> is unlikely to apply if a UK firm is doing business in a UK establishment for a client located in the United Kingdom in relation to a United Kingdom product. However, if there is a non-UK element, the <i>firm</i> should consider whether it is subject to the directive, whether the business it is performing is subject to the directive and whether the particular <i>rule</i> is within the scope of the directive. If the answer to all three questions is ‘yes’, the <i>EEA territorial scope rule</i> may change the effect of the <i>general application rule</i> .
2.3	G	When considering a particular situation, a <i>firm</i> should also consider whether two or more directives apply.
3.	MiFID: effect on territorial scope	
3.1	G	<i>PERG 13</i> contains general <i>guidance</i> on the <i>persons</i> and businesses to which <i>MiFID</i> applies.
3.2	G	This <i>guidance</i> concerns the <i>rules</i> within the scope of <i>MiFID</i> including those <i>rules</i> which are in the same subject area as the implementing <i>rules</i> . A <i>rule</i> is within the scope of <i>MiFID</i> if it is followed by a ‘Note:’ indicating the article of <i>MiFID</i> or the <i>MiFID implementing Directive</i> which it implements.
3.3	G	For a UK <i>MiFID investment firm</i> , <i>rules</i> in this sourcebook that are within the scope of <i>MiFID</i> generally apply to its <i>MiFID business</i> carried on from an establishment in the United Kingdom. They also generally apply to its <i>MiFID business</i> carried on from an establishment in another EEA State, but only where that business is not carried on within the territory of that State. (See articles 31(1) and 32(1) and (7) of <i>MiFID</i>)
3.4	G	For an EEA <i>MiFID investment firm</i> , <i>rules</i> in this sourcebook that are within the scope of <i>MiFID</i> generally apply only to its <i>MiFID business</i> if that

		business is carried on from an establishment in, and within the territory of, the <i>United Kingdom</i> . (See article 32(1) and (7) of <i>MiFID</i>)
3.5	G	However, the <i>rules on investment research and non-independent research (COBS 12.2 and 12.3)</i> and the <i>rules on personal transactions (COBS 11.7)</i> apply on a "home state" basis. This means that they apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> and do not apply to an <i>EEA MiFID investment firm</i> .
4.	Insurance Mediation Directive: effect on territorial scope	
4.1	G	The <i>Insurance Mediation Directive's</i> scope covers most <i>firms</i> carrying on most types of <i>insurance mediation</i> . The <i>rules</i> in this sourcebook within the Directive's scope are those relating to <i>life policies</i> that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis. The <i>rules</i> implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in <i>COBS 7 (Insurance mediation)</i> and <i>COBS 9 (Suitability (including basic advice))</i> .
4.2	G	In the <i>FSA's</i> view, the responsibility for these minimum requirements rests with the <i>Home State</i> , but a <i>Host State</i> is entitled to impose additional requirements in the 'general good'. Accordingly, the general rules on territorial scope are modified so that:
	(1)	for a <i>UK firm</i> providing <i>passported activities</i> in another <i>EEA State</i> under the Directive, whether through a <i>branch</i> or <i>cross-border services</i> , the <i>rules</i> implementing the Directive's minimum requirements apply but the additional <i>rules</i> within the Directive's scope do not;
	(2)	for an <i>EEA firm</i> providing <i>passported activities</i> under the Directive in the <i>United Kingdom</i> , the <i>rules</i> implementing the Directive's minimum requirements do not apply, but the additional <i>rules</i> within the Directive's scope do apply unless the <i>Home State</i> imposes measures of like effect. (See recital 19 and article 12(5) of the <i>Insurance Mediation Directive</i>)
5.	Consolidated Life Directive: effect on territorial scope	
5.1	G	The <i>Consolidated Life Directive's</i> scope covers <i>long-term insurers</i> authorised under that Directive conducting <i>long-term insurance business</i> . The <i>rules</i> in this sourcebook within the Directive's scope are the <i>cancellation rules</i> and those <i>rules</i> requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>insurance contract</i> . The Directive specifies minimum information and cancellation requirements and permits <i>EEA States</i> 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 <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be determined by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other rules, in particular the <i>financial promotion rules</i> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the <i>Consolidated Life Directive</i>)
6.	Distance Marketing Directive: effect on territorial scope	
6.1	G	In broad terms, a <i>firm</i> is within the <i>Distance Marketing Directive's</i> scope when conducting an activity relating to a <i>distance contract</i> with a <i>consumer</i> . The <i>rules</i> in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information, the <i>cancellation rules</i> and the other specific <i>rules</i> implementing the Directive contained in <i>COBS 5</i> (Distance communications).
6.2	G	In the <i>FSA's</i> view, the Directive places responsibility for requirements within the Directive's scope on the <i>Home State</i> except in relation to business conducted through a branch, in which case the responsibility rests with the <i>EEA State</i> 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 <i>Distance Marketing Directive</i>)
6.3	G	This means that relevant <i>rules</i> in this sourcebook will, in general, apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in the <i>United Kingdom</i> (whether the <i>firm</i> is a national of the <i>UK</i> or of any other <i>EEA</i> or non- <i>EEA</i> state).
6.4	G	Conversely, the relevant <i>rules</i> in this sourcebook will not apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in another <i>EEA state</i> if the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA state</i> .
6.5	G	In the <i>FSA's</i> view:
	(1)	the 'country of origin' basis of the Directive is in line with that of the <i>Electronic Commerce Directive</i> ; (See recital 6 of the <i>Distance Marketing Directive</i>)
	(2)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Consolidated Life Directive</i> , the territorial application of the <i>Distance Marketing Directive</i> takes precedence; in other words, the <i>rules</i> requiring pre-contract information and <i>cancellation rules</i> derived from the <i>Consolidated Life Directive</i> apply on a 'country of origin' basis rather than being based on the <i>state of the commitment</i> ; (See articles 4(1) and 16 of the <i>DMD</i> noting that the <i>DMD</i> was adopted after the <i>Consolidated Life Directive</i>)

		(3)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Insurance Mediation Directive</i> , the minimum information and other requirements in the <i>Insurance Mediation Directive</i> continue to be those applied by the 'Home State', but the minimum requirements in the <i>Distance Marketing Directive</i> and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the <i>IMD</i> was adopted after the <i>DMD</i> and is not expressed to be subject to it)
7.	Electronic Commerce Directive: effect on territorial scope		
7.1	G		The <i>Electronic Commerce Directive's</i> scope covers every <i>firm</i> carrying on an <i>electronic commerce activity</i> . Every <i>rule</i> in this sourcebook is within the Directive's scope.
7.2	G		A key element of the Directive is the ability of a <i>person</i> from one <i>EEA state</i> to carry on an <i>electronic commerce activity</i> freely into another <i>EEA state</i> . Accordingly, the territorial application of the <i>rules</i> in this sourcebook is modified so that they apply to a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in the <i>United Kingdom</i> with or for a <i>person</i> in the <i>United Kingdom</i> or another <i>EEA state</i> . Conversely, a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i> need not comply with the <i>rules</i> in this sourcebook. (See article 3(1) and (2) of the <i>Electronic Commerce Directive</i>)
7.3	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 <i>FSA</i> has adopted for this sourcebook. The derogation applies to an <i>insurer</i> that is authorised under and carrying on an <i>electronic commerce activity</i> within the scope of the <i>Consolidated Life Directive</i> and permits <i>EEA States</i> to continue to apply their advertising rules in the 'general good'. Where the derogation applies, the <i>financial promotion rules</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm's</i> 'country of origin' applies rules of like effect) but do not apply for outgoing <i>electronic commerce activities</i> . (See article 3(3) and Annex, fourth indent of the <i>Electronic Commerce Directive</i> ; Annex to European Commission Discussion Paper <i>MARKT/2541/03</i>)
7.4	G		In the <i>FSA's</i> 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 <i>Distance Marketing Directive</i> ; 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 <i>EEA States</i> to adopt a different approach to the <i>United Kingdom</i> in certain fields. (See recital 19 of the <i>IMD</i> , recital 6 of the <i>DMD</i> , article 3 and Annex of the <i>Electronic</i>

		<i>Commerce Directive</i>)	
8.	Investor Compensation Directive		
8.1	G	(1)	The <i>Investor Compensation Directive</i> generally requires <i>MiFID investment firms</i> to belong to a compensation scheme established in accordance with the Directive. The <i>rules</i> in this sourcebook that implement the Directive are those (i) requiring <i>MiFID investment firms</i> , 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 (<i>COBS 6.1.14R</i>) and (ii) restricting mention of the compensation scheme in advertising to factual references (<i>COBS 4.2.5R</i>).
		(2)	In the <i>FSA's</i> view, these matters are a <i>Home State</i> responsibility although a <i>Host State</i> may continue to apply its own rules in the 'general good'. Accordingly, these <i>rules</i> apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> but also apply in accordance with the <i>general application rule</i> to an <i>EEA MiFID investment firm</i> providing services in the <i>UK</i> whether through a <i>branch</i> or <i>cross-border services</i> unless its <i>Home State</i> applies rules of like effect.
9.	UCITS Directive: effect on territorial scope		
9.1	G	The <i>UCITS Directive</i> covers undertakings for collective investment in transferable securities (UCITS) meeting the requirements of the Directive, and their management companies and depositaries. The <i>rules</i> in this sourcebook within the Directive's scope are those in <i>COBS 14</i> (Providing product information to clients) relating to the distribution of a <i>simplified prospectus</i> by the management company. Those <i>rules</i> are the responsibility of the <i>Home State</i> of the UCITS. The Directive explicitly permits other <i>EEA States</i> 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 <i>MiFID</i> to management companies in relation to certain business activities. (See articles 1(6) and 44 of the <i>UCITS Directive</i>)	
9.2	G	Accordingly, the territorial scope of this sourcebook is modified so that:	
		(1)	the <i>rules</i> relating to the distribution of a <i>simplified prospectus</i> apply to the management company (<i>operator</i>) of a UCITS whose <i>Home State</i> is the <i>United Kingdom</i> when marketing in other <i>EEA States</i> ;
		(2)	those <i>rules</i> do not apply to a management company of a UCITS whose <i>Home State</i> is another <i>EEA State</i> when marketing in the <i>United Kingdom</i> ; other <i>rules</i> , such as the <i>financial promotion rules</i> and the information gathering and suitability rules (see <i>COBS 9 Suitability</i> (including basic advice)) continue to apply.

9.3	G	The Directive does not affect the territorial scope of <i>rules</i> as they apply to an intermediary selling a UCITS.
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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 not 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* conducts 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

General definition

- 3.2.1 R (1) A *person* to whom a *firm* provides, intends to provide or has provided:
- (a) a service in the course of carrying on a *regulated activity*; or
 - (b) in the case of *MiFID* 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”);

- (2) 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.

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

- 3.5.7 G An *elective professional client* should not be presumed to possess market knowledge and experience comparable to a *per se professional client*.

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

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

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

- 3.5.9 R (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*.

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

- 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*.

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

- 3.7.6 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.

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

- 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*.

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

Records

- 3.8.2 R (1) A *firm* must make a record of the form of each notice provided and each agreement entered into under this chapter. This record must be made at the time that standard form is first used and retained for the relevant period after the *firm* ceases to carry on business with *clients* who were provided with that form.
- (2) A *firm* must make a record in relation to each *client* of:
- (a) the categorisation established for the *client* under this chapter, including sufficient information to support that categorisation;
 - (b) evidence of despatch to the *client* of any notice required under this chapter and if such notice differs from the relevant standard form, a copy of the actual notice provided; and
 - (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*.

- (3) 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.

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

- 3.8.3 G 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*

(COBS 1 Annex 1 Part 1).

- (2) 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*

Directive]

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.

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					
[Fund name]	Quarter/ Year - Quarter/ Year pgr%	Quarter/ Year - Quarter/ Year pgr%	Quarter/ Year - Quarter/ Year pgr%	Quarter/ Year - Quarter/ Year pgr%	Quarter/ Year - Quarter/ Year pgr%

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:

$$\text{pgr} = ((P1 - P0)/P0) * 100$$
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-g 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 disapplied, 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*.

- 4.11.3 G 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)

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

(12)	The existence or absence of a right to cancel or withdraw under the cancellation rules (<i>COBS 15</i>) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) in accordance with those <i>rules</i> , 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 <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> 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 <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.
Information about redress	
(19)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> 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 <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its liabilities.
[Note: Recitals 21 and 23 to, and article 3(1) of, the <i>Distance Marketing Directive</i>]	

COBS 5 Annex 2R: Abbreviated distance marketing disclosure

This Annex belongs to COBS 5.1.12R

(1)	The identity of the <i>person</i> in contact with the <i>consumer</i> and his link with the <i>firm</i> .
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service including all taxes paid via the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(4)	Notice of the possibility that other taxes and/or costs may exist that are not paid via the <i>firm</i> or imposed by him.
(5)	The existence or absence of a right to cancel or withdraw in accordance with the cancellation rules (COBS 15) and, where the right to cancel or withdraw exists, its duration and the conditions for exercising it, including information on the amount the <i>consumer</i> may be required to pay on the basis of the cancellation rules.
(6)	That other information is available on request and what the nature of that information is.
	[Note: article 3(3)(b) of the <i>Distance Marketing Directive</i>]

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 a *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

(c) 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).

9 Suitability (including basic advice)

9.1 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 G *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

- (3) 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 <i>stakeholder products</i> may allow the <i>representative</i> administering it to depart from scripted questions where this is desirable to enable the <i>retail client</i> to better understand the points that need to be made provided this is compatible with the <i>representative's</i> competence and the degree of support offered by the <i>firm's</i> software and other systems. A software-based system is more likely to provide an adaptable means of providing prompts and support for <i>representatives</i> 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 <i>retail client</i> to exit freely and without pressure at any stage. It should also allow the <i>representative</i> 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 <i>retail client</i> .
4.	Where necessary the sales process should incorporate procedures to allow uncertainties in the <i>retail client's</i> 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 <i>retail client</i> cannot confirm whether he or she is eligible for membership of an <i>occupational pension scheme</i>).
Preliminary - all sales	
5.	<p>The <i>retail client</i> should be given the following preliminary information:</p> <ul style="list-style-type: none"> (a) the <i>retail client</i> will only be given <i>basic advice</i> about <i>stakeholder products</i>; (b) <i>stakeholder products</i> are intended to provide a relatively simple and low-cost way of investing and saving; (c) [intentionally blank] (d) the <i>retail client</i> 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 <i>stakeholder product</i>;

	<p>(e) the assessment of whether a <i>stakeholder product</i> is suitable will be made without a detailed assessment of the <i>retail client's</i> needs but will be based only on the information disclosed during the questioning process; and</p> <p>(f) the <i>retail client's</i> answers will be noted and, at the end of the process, if a recommendation to acquire a <i>stakeholder product</i> is made, the <i>retail client</i> will be provided with a copy of the completed questionnaire.</p>
6.	Following 5, the <i>retail client</i> 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 <i>retail client</i> is unlikely to be able to afford a <i>stakeholder product</i> , the sale should be terminated and the <i>retail client</i> given an explanation together with a copy of the questions and answers completed to that point.
Financial Priorities and Debt - all sales	
8.	A <i>retail client</i> should be assessed to ascertain other possible financial priorities -for example, does the <i>retail client</i> need (a) insurance protection; (b) access to liquid cash to meet an emergency; or (c) to reduce existing debts? If appropriate, the <i>retail client</i> should be given an unambiguous warning about the desirability of meeting those priorities before acquiring a <i>stakeholder product</i> .
9.	A stronger warning about the desirability of addressing debt as a priority should be given if it appears that the <i>retail client</i> 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 <i>firm</i> should consider using a threshold or indicator to decide whether a <i>retail client</i> should be excluded on the basis of affordability. Examples may include where the <i>retail client</i> 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 <i>firm</i> 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 <i>firm</i> should clearly explain what it needs to know about a <i>retail client's</i> 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 <i>firm</i> may use a simple reckoner to assess <i>retail client</i> debt, but should be conscious of the nature of, and not give the impression that it is providing more than, <i>basic advice</i> .
11.	If a <i>firm</i> gives a warning about the desirability of meeting other priorities

	before acquiring a <i>stakeholder product</i> , or about affordability, it should also invite the <i>retail client</i> to consider terminating the sales process.
Saving and investment objectives - all sales (except establishing a stakeholder CTF)	
12.	<p>A <i>retail client's</i> savings and investment objectives, including the period over which the <i>retail client</i> wishes to save or invest, should be ascertained including whether the <i>retail client</i>:</p> <ul style="list-style-type: none"> (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.	<p>If that information indicates that the <i>retail client's</i> objective is:</p> <ul style="list-style-type: none"> (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; <p>the <i>firm</i> should not normally recommend a <i>CIS stakeholder product</i>, a <i>linked life stakeholder product</i>, a <i>stakeholder pension scheme</i> or topping up of a <i>stakeholder CTF</i>.</p>
Tolerance of risk - all sales	
14.	If a <i>retail client</i> is not willing to accept any risk of the capital value of an investment being reduced then <i>CIS stakeholder products</i> , <i>linked life stakeholder products</i> and <i>stakeholder CTFs</i> should not usually be recommended. However, a <i>firm</i> may, if appropriate, explain the effect of inflation on long-term savings especially in relation to pensions and invite the <i>retail client</i> to consider his attitude to risk in the light of that explanation.
15.	If a <i>retail client</i> is willing to accept the risk of capital reduction in some circumstances but not others then, before any recommendation to acquire a <i>CIS stakeholder product</i> or <i>linked life stakeholder product</i> is made, the <i>retail client</i> should be reminded of the other circumstances in which he or she is unwilling to accept risk to capital.
Stakeholder pensions	
16.	A <i>stakeholder pension scheme</i> should not be recommended, and the <i>retail client</i> should be advised to seek alternative or further advice, if it appears that the <i>retail client</i> :

	<p>(a) has or will have access to an <i>occupational pension scheme</i>; or</p> <p>(b) is likely to view income in retirement from state benefits as sufficient; or</p> <p>(c) already has a pension to which he or she could make further contributions; or</p> <p>(d) wishes to retire within five years.</p>
17.	It may also be appropriate to advise the <i>retail client</i> that other courses of action may be more beneficial than buying a <i>stakeholder pension scheme</i> (for example joining an <i>occupational pension scheme</i>).
18.	A <i>firm</i> designing a sales process for use in the workplace may take account of the benefits offered by the employer. If a <i>firm</i> recommends a <i>stakeholder pension scheme</i> on the basis of benefits provided by an employer, then it should explain the basis of the recommendation to the <i>retail client</i> and suggest that the <i>retail client</i> seek <i>advice</i> if he or she has any concerns.
19.	A <i>firm</i> should design its processes with a view to addressing the risk that <i>retail clients</i> 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 <i>retail client's</i> understanding of the issues and to elicit appropriate information.
20.	<i>Retail clients</i> should be told that a <i>stakeholder pension scheme</i> is life-styled and what this means.
21.	[intentionally blank]
ISAs	
22.	A <i>firm</i> should ascertain whether the <i>retail client</i> has already opened a mini or maxi <i>ISA</i> and, if so, whether it would be appropriate for the <i>retail client</i> to open a non- <i>ISA</i> 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*.

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

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

[**Note:** recital 30 to *MiFID*]

Personalised communications

- 10.5.3 G
- (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 G [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 G 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

depository that is regulated as a provider of depository 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*]

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

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

Monitoring the effectiveness of execution arrangements and policy

- 11.2.27 R 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

- 11.2.28 R (1) A *firm* must review annually its execution policy, as well as its order execution arrangements.
- (2) 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

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

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

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

- 11.2.30 R A *firm* must, when providing the service of *portfolio management*, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

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

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

execution.

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

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

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

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

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

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

- 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

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

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

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 G 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 R 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 G The *EEA territorial scope rule* modifies the general *rule* of application to the extent necessary to be compatible with European law (see paragraph 1.1 of Part 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 R This section applies to a *firm* which produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, under its own responsibility or that of a member of its *group*.

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

- 12.2.2 G 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.

- (4) 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 R 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 R 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 R 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 R 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 R 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:		
(1)	include the title: 'key features of the [name of product]';	
(2)	describe the product in the order of the following headings, and by giving the following information under those headings:	
	Heading	Information to be given
	'Its aims'	A brief description of the product's aims
	'Your commitment' or 'Your investment'	What a <i>retail client</i> is committing to or investing in and any consequences of failing to maintain the commitment or investment
	'Risks'	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
	'Questions and Answers'	(in the form of questions and answers) the principle terms of the product, what it will do for a <i>retail client</i> and any other information necessary to enable a <i>retail client</i> to make an informed decision.

COBS 13 Annex 1R: The Consolidated Life Directive Information

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

Information about the firm	
(1)	The <i>firm's</i> name and its legal form;
(2)	The name of the <i>EEA State</i> in which the head office and, where appropriate, agency or branch concluding the contract is situated; and
(3)	The address of the head office and, where appropriate, agency or branch concluding the contract.
Information about the commitment	
(4)	Definition of each benefit and each option;
(5)	Term of the contract;
(6)	Means of terminating the contract;
(7)	Means of payment of <i>premiums</i> and duration of payments;
(8)	Means of calculation and distribution of bonuses;
(9)	Indication of surrender and paid-up values and the extent to which they are guaranteed;
(10)	Information on the <i>premiums</i> for each benefit, both main benefits and supplementary benefits, where appropriate;
(11)	For unit-linked <i>policies</i> , definition of the units to which the benefits are linked;
(12)	Indication of the nature of the underlying assets for unit-linked <i>policies</i> ;
(13)	Arrangements for application of the cooling-off period;
(14)	General information on the tax arrangements applicable to the type of <i>policy</i> ;
(15)	The arrangements for handling complaints concerning contracts by <i>policyholders</i> , lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings; and
(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 <i>insurer</i> proposes to choose.
[Note: article 36(1) of, and Annex III to, the <i>Consolidated Life Directive</i>]	

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*:

Cancellable contract	Cancellation period	Supplementary provisions
Life and pensions:		
<ul style="list-style-type: none"> • a <i>life policy</i> (including a <i>pension annuity</i>, a <i>pension policy</i> or within a <i>wrapper</i>) • a contract to join a <i>personal pension scheme</i> or a <i>stakeholder pension scheme</i> • a <i>pension contract</i> • a contract for a <i>pension transfer</i> • a contract to vary an existing <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> by exercising, for the first time, an option to make <i>income withdrawals</i>, 	30 calendar days	<p>For a <i>life policy</i> effected when opening or transferring a <i>wrapper</i>, the 30 calendar day right to cancel applies to the entire arrangement</p> <p>For a contract to buy a <i>unit</i> in a <i>regulated collective investment scheme</i> within a <i>pension wrapper</i>, the cancellation right for 'non-life/pensions (advised but not at a distance)' below may apply</p> <p>Exemptions may apply (see COBS 15 Annex 1)</p>

Cash deposit ISAs:		
• a contract for a <i>cash deposit ISA</i>	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)
Non-life/pensions (advised but not at a distance): a <i>non-distance contract ...</i>		
<ul style="list-style-type: none"> • to <i>buy</i> a <i>unit</i> in a <i>regulated collective investment scheme</i> (including within a <i>wrapper</i> or <i>pension wrapper</i>) • to open or transfer a child trust fund (<i>CTF</i>) • to open or transfer an <i>ISA</i> or <i>PEP</i> • for an <i>Enterprise Investment Scheme</i> 	14 calendar days	<p>These rights arise only following a <i>personal recommendation</i> of the contract (by the <i>firm</i> or any other <i>person</i>)</p> <p>For a <i>unit</i> bought when opening or transferring a <i>wrapper</i> or <i>pension wrapper</i>, the 14 calendar day right to cancel applies to the entire arrangement</p> <p>Exemptions may apply (see COBS 15 Annex 1)</p>
Non-life/pensions (at a distance): a <i>distance contract</i> , relating to ...		
<ul style="list-style-type: none"> • <i>accepting deposits</i> • <i>designated investment business</i> 	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)

[**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 R 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 R 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*.

[**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

- 16.3.11 R 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.

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

- 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			
	The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i> , in accordance with <i>SUP 17 Annex 1R</i>	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
	General		
1.	the reporting <i>firm</i> identification;	Y	
2.	the name or other designation of the <i>client</i> ;	Y	
3.	the trading day;	Y	Y
4.	the trading time;	Y	Y
5.	the type of the order (for example, a limit order or a	Y	Y

	market order);		
6.	the venue identification;	Y	Y
7.	the instrument identification;	Y	Y
8.	the buy/sell indicator;	Y	Y
9.	the nature of the order if other than buy/sell;	Y	Y
10.	the quantity;	Y	Y
11.	the unit price;	Y	Y
12.	the total consideration;	Y	Y
13.	a total sum of the commissions and expenses charged and, where the <i>retail client</i> so requests, an itemised breakdown;	Y	Y
14.	[intentionally blank]		
15.	[intentionally blank]		
16.	[intentionally blank]		
17.	the <i>client's</i> responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the <i>client</i> ; and	Y	
18.	if the <i>client's</i> counterparty was the <i>firm</i> itself or any person in the <i>firm's group</i> or another <i>client</i> of the <i>firm</i> , the fact that this was the case unless the order was <i>executed</i> through a trading system that facilitates anonymous trading.	Y	
19.	[intentionally blank]		
[Note: article 40(4) and recital 64 to the <i>MiFID implementing Directive</i>]			
A <i>firm</i> may provide the <i>client</i> with the information referred to in this Annex using standard codes if it also provides an explanation of the codes used.			
[Note: article 40(5) of the <i>MiFID implementing Directive</i>]			

COBS 16 Annex 2 R - Information to be included in a Periodic report

This annex forms part of *COBS* 16.3.1R.

	Periodic information (all cases)	
1.	the name of the <i>firm</i> ;	
2.	the name or other designation of the <i>retail client's</i> account;	
3.	a statement of the contents and the valuation of the portfolio, including details of:	
	(a)	each <i>designated investment</i> held, its market value or fair value if market value is unavailable;
	(b)	the cash balance at the beginning and at the end of the reporting period; and
	(c)	the performance of the portfolio during the reporting period;
4.	the total amount of <i>fees</i> and charges incurred during the reporting period, itemising at least total management <i>fees</i> and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;	
5.	a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the <i>firm</i> and the <i>client</i> ;	
6.	the total amount of dividends, interest and other payments received during the reporting period in relation to the <i>client's</i> portfolio; and	
7.	information about other corporate actions giving rights in relation to <i>designated investments</i> held in the portfolio.	
[Note: article 41(2) of <i>MiFID implementing Directive</i>]		

17 Claims handling for long-term care insurance

17.1 Providing information to claimants and dealing with claims

17.1.1 R 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

17.1.2 R 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

17.1.3 R 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.

18 [Intentionally blank]

19 **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 different 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

(3) a summary of any other material information.

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 *retribution* (*COBS* 20.2.42R to *COBS* 20.2.52G):
- (a) applies to a *firm* that is proposing to make a *retribution* 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 *retribution* (*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 *INSPRU* 1.3.119R to *INSPRU* 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 administering 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 units 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 *retribution*.
 - (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*

fund.

- 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 *retribution 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 *retribution expert's* terms of appointment allow him to communicate freely and in confidence with the *FSA*; and
 - (3) require the *retribution 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 *retribution 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 '*retribution expert's* report';
- (2) the '*independent expert*' was a reference to the '*retribution expert*'; and
- (3) the '*scheme*' was a reference to the proposal for a '*retribution*'.

Process for retribution of inherited estates: Information to policyholders

20.2.49 R A *firm* must ensure that every *policyholder* that may be affected by the proposed *retribution* is sent appropriate and timely information about:

- (1) the *retribution* process, including the role of the *policyholder advocate*, the *independent expert* or *retribution expert*, as the case may be, and other individuals appointed to perform particular functions;
- (2) the *retribution* 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 *retribution* 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 *retribution expert* must be

made available to every *policyholder* that may be affected by the proposed *retribution*.

Process for retribution 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 *retribution*; 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 retribution of inherited estates: Costs

- 20.2.52 G
- (1) *Retribution* 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 *retribution* 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.

- 20.2.60 G (1) 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*.
- (2) 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.

20.3 Principles and Practices of Financial Management

Production of PPFM

- 20.3.1 R (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.
- (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.
- (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.
- (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

	Subject	Issues
(1)	Amount payable under a with-profits policy	<p>(a) Methods used to guide determination of the amount that is appropriate to pay individual <i>with-profits policyholders</i>, including:</p> <ol style="list-style-type: none"> (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. <p>(b) Approach to setting bonus rates.</p> <p>(c) Approach to smoothing maturity payments and surrender payments, including:</p> <ol style="list-style-type: none"> (i) the smoothing policy applied to each type of <i>with-profits policy</i>; (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 <i>firm's</i> investment strategy for its <i>with-profits business</i> or, if different, any <i>with-</i>

	Subject	Issues
		<p><i>profits fund</i>, including:</p> <ul style="list-style-type: none"> (a) the degree of matching to be maintained between assets relevant to <i>with-profits business</i> and liabilities to <i>with-profits policyholders</i> and other creditors; (b) the <i>firm's</i> approach to assets of different credit or liquidity quality and different volatility of market values; (c) the presence among the assets relevant to <i>with-profits business</i> of any assets that would not normally be traded because of their importance to the <i>firm</i>, and the justification for holding such assets; and (d) the <i>firm's</i> controls on using new asset or liability instruments and the nature of any approval required before new instruments are used.
(3)	Business risk	<p>The exposure of the <i>with-profits business</i> to business risks (new and existing), including the <i>firm's</i>:</p> <ul style="list-style-type: none"> (a) procedures for deciding if the <i>with-profits business</i> may undertake a particular business risk; (b) arrangements for reviewing and setting a limit on the scale of such risks; and (c) procedures for reflecting the profits or losses of such business risks in the amounts payable under <i>with-profits policies</i>.
(4)	Charges and expenses	<ul style="list-style-type: none"> (a) The way in which the <i>firm</i> applies charges and apportionments expenses to its <i>with-profits business</i>, including, if material, any interaction with connected firms. (b) The cost apportionment principles that will determine which costs are, or may be, charged to a <i>with-profits fund</i> and which costs are, or may be, charged to the other parts of its business of its shareholders.
(5)	Management of inherited	Management of any <i>inherited estate</i> and the uses to which the <i>firm</i> may put that <i>inherited estate</i> .

	Subject	Issues
	estate	
(6)	Volumes of new business and arrangements on stopping taking new business	If a <i>firm's with-profits fund</i> is accepting new <i>with-profits</i> business, its practice for review of the limits on the quantity and type of new business and the actions that the <i>firm</i> would take if it ceased to take on new business of any significant amount.
(7)	Equity between the with-profits fund and any shareholders	The way in which the interests of <i>with-profits policyholders</i> are, or may be, affected by the interests of any shareholders of the <i>firm</i> .

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

Reference to PPFM issues (<i>COBS</i> 20.3.6R)	With-profits principles	With-profits practices
(1) Amount payable under a with-profits policy	<p>General</p> <p>(a) Circumstances under which any historical assumptions or parameters, relevant to methods used to determine the amount payable, may be changed;</p>	<p>General</p> <p>(e) For each major class of <i>with-profits policy</i>, methods establishing the main assumptions or parameters that decide the output of methods that determine the amount payable;</p> <p>(f) Degree of approximation allowed when assumptions or parameters are applied</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		<p>across generations of <i>with-profits policyholders</i> or across different types or classes of <i>with-profits policies</i>;</p> <p>(g) Formality with which the methods, parameters or assumptions used are documented;</p> <p>(h) Target range, or target ranges, that have been set for maturity payments;</p> <p>(i) Factors likely to be regarded as relevant to address <i>policyholders'</i> interests or security when determining <i>excess surplus</i>; and</p> <p>Investment return, expenses or charges and tax</p> <p>(j) How investment return, expenses or charges and tax are brought into account and how the impact of those items is determined on the amount payable. In particular:</p> <p>(i) any distinctions made in recognising the investment return from a subset of the total assets of a <i>with-profits fund</i>;</p> <p>(ii) whether expenses are apportioned between all the policies in a <i>with-profits fund</i> or apportioned in some</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		<p>other way;</p> <p>(iii) the relationship between the liability to tax attributed to a <i>with-profits fund</i> and the tax that the <i>firm</i> imputes to determine the amount payable;</p> <p>(iv) impact on the amount payable of any attributed liability to tax of a <i>with-profits fund</i> as a result of the <i>firm</i> making a transfer to shareholders; and</p> <p>(v) how any other items are brought into account.</p>
	<p>Bonus rates</p> <p>(b) General aims in setting bonus rates and the constraints to which the <i>firm</i> may be subject in changing economic circumstances;</p> <p>(c) How the range of <i>with-profits policies</i> or generations of <i>with-profits policies</i> over which the <i>firm</i> believes a single bonus rate would be appropriate is determined and the circumstances under which it believes a new bonus series would be necessary;</p>	<p>Bonus rates</p> <p>(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 <i>with-profits policies</i> 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;</p> <p>(l) Frequency at which</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
	and	<p>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;</p> <p>(m) Maximum amount by which annual bonuses would alter if annual bonus rates were reset;</p> <p>(n) Approach to setting any interim bonus rates before the next declaration of annual bonus rates;</p> <p>(o) Relationship or interaction between final bonus rates and any market value reductions, if both can apply at the same time;</p> <p>(p) How final bonus rates influence the value of <i>with-profits policies</i> that have formulaic surrender or transfer bases (for example, older conventional policies rather than unitised policies); and</p>
	<p>Smoothing</p> <p>(d) Statement as to whether smoothing is intended to be neutral over time.</p>	<p>Smoothing</p> <p>(q) Any differences in approach for:</p> <p>(i) the various types of <i>with-profits policy</i>;</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		<p>(ii) different categories of payout, such as between surrendered policies and maturing policies; and</p> <p>(iii) different generations of <i>with-profits policyholders</i>.</p>
(2) Investment strategy	<p>(a) How the types, classes or mix of assets are determined; and</p> <p>(b) Strategy in respect of derivatives and other instruments.</p>	<p>(c) Whether and to what extent there is hypothecation of assets;</p> <p>(d) Period between formal reviews of investment strategy;</p> <p>(e) Approach to investment in different asset classes, and assets of different credit or liquidity quality, including assets not normally traded; and</p> <p>(f) Details of any external support available to the <i>with-profits fund</i> and how this affects the investment strategy.</p>
(3) Business risk	(a) Where a <i>firm</i> explicitly excludes business risk from a class of <i>with-profits policies</i> but there are residual risks, clarification where these risks such as guarantee and smoothing costs are	<p>(c) Current limits which apply to the taking on of business risk; and</p> <p>(d) Whether and to what extent particular generations of <i>with-profits policyholders</i> or classes of <i>with-profits policies</i> bear or might</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
	<p>borne; and</p> <p>(b) Define where compensation costs from a business risk would be borne.</p>	<p>bear particular business risks, including for example, crystallised or contingent guarantees to other classes of <i>policyholders</i> or whether the out-turn from all business risk is pooled across all <i>with-profits policies</i>.</p>
(4) Charges and expenses	<p>(a) Factors that would drive any change to the basis on which the <i>firm</i> applies charges to or apportions its actual expenses amongst <i>with-profits policies</i>, or exercises any discretion to apply charges to particular <i>with-profits policies</i>.</p>	<p>(b) Charges currently applied and the expenses currently apportioned to major classes of <i>with-profits policies</i>;</p> <p>(c) Relationship between the <i>firm's</i> actual charges and expenses, as applied to determine the amounts payable under <i>with-profits policies</i>, and the charges and expenses borne by the <i>with-profits fund</i>;</p> <p>(d) Circumstances under which expenses will be charged to the <i>with-profits fund</i> at an amount other than cost, and the reasons why; and</p> <p>(e) Interval for reviewing any arrangements for out-sourced services, including those provided by connected parties, giving a broad indication of the terms</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		for termination.
(5) Management of inherited estate	<p>(a) Preferred size or scale of <i>inherited estate</i> and implications for the values of the <i>with profits policies</i>; and</p> <p>(b) Any existing division of the <i>inherited estate</i> between <i>with-profits funds</i>; and</p> <p>(c) Any constraints on the freedom to deal with the <i>inherited estate</i> as a result of previous dealings.</p>	<p>(d) How the <i>inherited estate</i> is used, for example, in meeting costs;</p> <p>(e) Whether the investment strategy for the <i>inherited estate</i> differs from the rest of the <i>with-profits fund</i>; and</p> <p>(f) Any current guidelines in place as to the size or scale of the <i>inherited estate</i> or as to how and over what time period the <i>inherited estate</i> would be managed, if it becomes too large or too small.</p>
(7) Equity between the with-profits fund and any shareholders	(a) Arrangements for, and any changes to, profit sharing between shareholders and <i>with-profits policyholders</i> .	<p>(b) Current basis on which profit between <i>with-profits policyholders</i> and shareholders is divided; and</p> <p>(c) Whether the pricing of any policies being written, and particular policies open to new business, appear to be significantly and systematically reducing the <i>inherited estate</i> if the shareholder transfer is taken into account.</p>

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

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
			Overview of transitional provisions for client categorisation		
1.1	<i>COBS 3</i>	G	<p>(1) <i>COBS</i> TP 1.2 contains default transitional categorisation provisions in relation to the existing <i>clients</i> of a <i>firm</i> on 1 November 2007. In many cases, they allow a <i>client</i> to be automatically provided with the nearest equivalent categorisation under <i>COBS 3</i> to their previous categorisation.</p> <p>(2) <i>COBS</i> TP 1.3 explains how the transitional provisions for <i>client</i> categorisation relate to the requirement for a <i>firm</i> to act if it becomes aware that an <i>elective professional client</i> no longer satisfies the initial conditions for its categorisation.</p> <p>(3) The default provisions do not prevent a <i>firm</i> categorising such a <i>client</i> differently in accordance with <i>COBS 3</i>. <i>COBS</i> TP 1.4 provides guidance on how some of the procedural requirements in <i>COBS 3</i> apply in some such cases.</p> <p>(4) <i>COBS</i> TP 1.5 contains transitional notification obligations, which apply if the default provisions do not allow that <i>client</i> to be provided with the nearest equivalent categorisation</p>	From 1 November 2007 indefinitely	1 November 2007

			<p>or a <i>firm</i> chooses not to take advantage of those provisions in relation to a <i>client</i>.</p> <p>(5) <i>COBS</i> TP 1.6 contains a transitional notification obligation that applies to a <i>firm</i> that, in relation to <i>MiFID</i> or <i>equivalent third country business</i>, takes advantage of the default transitional categorisation provisions to classify a <i>client</i> as a <i>per se professional client</i>.</p>		
			Categorisation of existing clients		
1.2	<i>COBS</i> 3	R	<p>(1) An existing <i>client</i> that was correctly categorised as a <i>private customer</i> immediately before 1 November 2007 is a <i>retail client</i> unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS</i> 3.</p> <p>(2) An existing <i>client</i> that was correctly categorised as an <i>intermediate customer</i> immediately before 1 November 2007:</p> <p>(a) is an <i>elective professional client</i> if it was an expert <i>private customer</i> that had been re-classified as an <i>intermediate customer</i> on the basis of its experience and understanding; or</p> <p>(b) is otherwise a <i>per se professional client</i>;</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS</i> 3.</p> <p>(3) An existing <i>client</i> that was correctly categorised as a <i>market counterparty</i> immediately before 1 November 2007 is:</p>	From 1 November 2007 indefinitely	1 November 2007

			<p>(a) for <i>eligible counterparty business</i> that is not <i>MiFID</i> or <i>equivalent third country business</i>, an <i>eligible counterparty</i>; and</p> <p>(b) otherwise, a <i>per se professional client</i>;</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>[Note: Article 71(6) of, and third paragraph of section II.2 of Annex II to, <i>MiFID</i>]</p>		
1.3	<i>COBS 3</i>	G	<p>Under <i>COBS 3.5.9R</i>, if a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i>, the <i>investment firm</i> must take the appropriate action. In the case of a <i>client</i> that has been classified as an <i>elective professional client</i> under <i>COBS TP 1.2R(2)(a)</i>, the initial conditions are those that applied to the <i>client's</i> initial categorisation as an <i>intermediate customer</i>.</p>	From 1 November 2007 indefinitely	1 November 2007
			Former inter-professional business		
1.4	<i>COBS 3</i>	G	<p>The requirement to provide notices under <i>COBS 3.3.1R</i> only applies in relation to new <i>clients</i>. The requirement to obtain confirmation under <i>COBS 3.6.3R(2)</i> only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under <i>COBS 3</i> in relation to <i>eligible counterparty business</i>.</p>	From 1 November 2007 indefinitely	1 November 2007

			Transitional notification obligations		
1.5	COBS 3	R	<p>(1) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>private customer</i> immediately before 1 November 2007 as a <i>retail client</i>, it must notify that <i>client</i> of its categorisation as a <i>professional client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>(2) If a <i>firm</i> does not categorise a <i>client</i> that was an <i>intermediate customer</i> immediately before 1 November 2007 as a <i>professional client</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>(3) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>market counterparty</i> immediately before 1 November 2007 as an <i>eligible counterparty</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>professional client</i> on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>[Note: article 28(1) of the <i>MiFID implementing Directive</i>]</p>	From 1 November 2007 indefinitely	1 November 2007
1.6	COBS 3	R	If a <i>firm</i> , in relation to <i>MiFID</i> or <i>equivalent third country business</i> , categorises a <i>client</i> who would not otherwise have been a <i>professional client</i> as a <i>professional client</i> under <i>COBS</i> TP 1.2(2)(b) or (3)(b), it must	From 1 November 2007 indefinitely	1 November 2007

			inform that <i>client</i> about the relevant conditions for the categorisation of <i>clients</i> . This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i> . [Note: article 71(6) of <i>MiFID</i>]		
1.7		G	A notice to a <i>professional client</i> under COBS TP 1.6 should inform that <i>client</i> : (a) that they have been categorised as a <i>professional client</i> ; and (b) of the main differences between the treatment of a <i>retail client</i> and a <i>professional client</i> .	From 1 November 2007 indefinitely	1 November 2007
1.8		R	The record-keeping requirements under <i>COBS</i> 3.8.2R apply in relation to any <i>client</i> categorisations or re-categorisations made under the transitional provisions for <i>COBS</i> 3.	From 1 November 2007 indefinitely	1 November 2007

COBS TP 2: Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
2.1	<i>COBS</i> 6.1	G	(1) If a <i>firm</i> provides services of an ongoing nature to an existing <i>client</i> it need not provide information to that <i>client</i> that it would be required to provide under <i>COBS</i> to a new <i>client</i> but which it was not required to	From 1 November 2007 indefinitely	1 November 2007

			provide under <i>COB</i> . (2) Services of an ongoing nature include <i>safekeeping and administration</i> and <i>managing investments</i> ,		
2.2	<i>COBS</i> 6.1	G	(1) If a <i>firm</i> provides a service for an existing <i>client</i> that is not of an ongoing nature and which relates to the same particular type of <i>designated investment</i> as a previous service, the <i>firm</i> need not provide information to that <i>client</i> that it would be required to provide under <i>COBS</i> 6.1 to a new <i>client</i> but which it was not required to provide under <i>COB</i> . (2) But a <i>firm</i> should ensure that the <i>client</i> 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.	From 1 November 2007 indefinitely	1 November 2007
2.3	<i>COBS</i> 10.1.2R	R	For business which is not <i>MiFID</i> or <i>equivalent third country business</i> , compliance with <i>COB</i> 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 <i>COBS</i> 10.1.2R (<i>arranging</i> or <i>dealing</i> in certain <i>derivatives</i> and <i>warrants</i> for <i>retail clients</i>).	From 1 November 2007 to 31 May 2008	1 November 2007
2.4	<i>COBS</i> 10.1.2R	G	This transitional (TP 2.3R) relates to non- <i>MiFID</i> or <i>equivalent third country business</i> arising out of a <i>direct offer financial promotion</i> of a <i>derivative</i> or <i>warrant</i> (or both) for a <i>retail client</i> . This would include, for example, sports or political spread betting. For such business, a <i>firm</i> may begin to comply with the new <i>appropriateness rules</i> at any time within six <i>months</i> of 1 November	From 1 November 2007 to 31 May 2008	1 November 2007

			so long as, in the meantime, it complies with <i>COB 3.9.5R(2)</i> .		
2.5	<i>COBS 13</i>	R	<p>A <i>firm</i> is not required to prepare a <i>key features document</i> or the <i>Consolidated Life Directive information</i> for a product if:</p> <p>(1) the rules would have required the <i>firm</i> to prepare <i>key features</i> for the product if they were still in force; and</p> <p>(2) the <i>firm</i> prepares <i>key features</i> in accordance with the rules as if they were still in force.</p> <p>For these purposes, ‘the rules’ are the <i>rules</i> on product disclosure and the customer’s right to cancel or withdraw (<i>COB 6</i>) that were in force on 31 October 2007.</p>	From 1 November 2007 until 31 October 2008	1 November 2007
2.6	<i>COBS 14.1</i> and <i>COB 14.2</i>	R	<p>A <i>firm</i> is not required to provide a <i>key features document</i> or the <i>Consolidated Life Directive information</i> for a product if:</p> <p>(1) the rules would have required the <i>firm</i> to provide <i>key features</i> for that product if they were still in force;</p> <p>(2) the <i>firm</i> is satisfied, on reasonable grounds, that providing <i>key features</i> in accordance with the rules, as if they were still in force, will not cause:</p> <p style="padding-left: 40px;">(a) a <i>client</i> to suffer any prejudice; or</p> <p style="padding-left: 40px;">(b) the <i>firm</i> to breach its obligations under one or more of the <i>Principles</i>; and</p> <p>(3) the <i>firm</i> provides <i>key features</i> for the product in accordance with the rules as if they were still in force.</p>	From 1 November 2007 until 31 October 2008	1 November 2007

			For these purposes, ‘the rules’ means the <i>rules</i> on product disclosure and the customer’s right to cancel or withdraw (<i>COB</i> 6) that were in force on 31 October 2007.		
2.7	<i>COBS</i> 15	R	<p>Cancellation</p> <p>(1) In relation to a contract concluded before 1 November 2007 the previous cancellation rules (<i>COB</i> 6.7) continue to apply.</p> <p>(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 <i>COBS</i> 15 as if made under this sourcebook.</p>	1 November 2007 for 6 months	From 1 November 2007
2.8	<i>COBS</i> 16.3 (Periodic statements)	G	<p>This transitional <i>rule</i> applies in relation to a periodic reporting period for a <i>periodic statement</i> that includes 1 November 2007.</p> <p>A <i>firm</i> may choose to comply with either <i>COBS</i> 16.3 or <i>COB</i> 8.2 in providing any <i>periodic report</i> in relation to which this <i>rule</i> applies.</p>	From 1 November 2007 indefinitely	1 November 2007
2.9	<i>COBS</i> 20.2.1G – 20.2.41G; <i>COBS</i> 20.2.53R – 20.2.60G (Treating with-profits policyholders fairly)	R	The provisions listed in column (2) do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>FSA</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005.	From 1 November 2007 indefinitely	1 November 2007
2.10	<i>COBS</i> 20.2.42R (3) (Policyholder advocate: appointment and role)	R	The provision listed in column (2) does not apply to a <i>firm</i> if it is already carrying out a <i>retribution</i> and the process is substantially underway to the extent that it has on or before 31 October 2007 appointed a <i>policyholder advocate</i> .	From 1 November 2007 – until completion of the <i>firm's retribution</i>	1 November 2007

2.11	COBS TP 2.9	G	<p>The <i>rules and guidance</i> 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 <i>FSA</i>, a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005. The effect of TP 2.9 is that these <i>rules</i> do not apply to such arrangements if, and to the extent that, it is inconsistent with them.</p> <p>A <i>firm</i> should be mindful, however, that, even if some or all of these <i>rules</i> are disapplied, the <i>firm</i> is still subject to the <i>rules</i> in the rest of the <i>Handbook</i>, including <i>Principle 6</i>.</p>	From 1 November 2007 indefinitely	1 November 2007
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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]