

**CONDUCT OF BUSINESS SOURCEBOOK (INSISTENT CLIENTS)
INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) and related provisions of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force in on 3 January 2018.

Amendments to the Handbook

- C. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Conduct of Business Sourcebook (Insistent Clients) Instrument 2017.

By order of the Board
7 December 2017

Annex

Amendments to the Conduct of Business sourcebook (COBS)

After COBS 9.5 (Record keeping and retention periods for suitability records), insert the following new section, 9.5A. The text is not underlined.

9.5A Additional guidance for firms with insistent clients

Purpose

9.5A.1 G The *guidance* in this section is relevant where a *client* of a *firm* becomes an insistent *client*. The purpose of the *guidance* is to set out how a *firm*, when dealing with an insistent *client*, can comply with its obligations under:

- (1) the *Principles* (see *PRIN* 2);
- (2) the *client's best interests rule* (see *COBS* 2.1.1R);
- (3) the *fair, clear and not misleading rule* (see *COBS* 4.2.1R);
- (4) the *rules* on suitability in this chapter (*COBS* 9 (Suitability (including basic advice))); and
- (5) the *rules* on record-keeping (see *COBS* 9.5 (Record keeping and retention periods for suitability reports) and *SYSC* 9 (General rules on record-keeping)).

Who is an insistent client?

9.5A.2 G In this section, a *client* should be considered an insistent *client* where:

- (1) the *firm* has given the *client* a *personal recommendation*;
- (2) the *client* decides to enter into a transaction which is different from that recommended by the *firm* in the *personal recommendation*; and
- (3) the *client* wishes the *firm* to facilitate that transaction.

Information to be communicated to an insistent client

9.5A.3 G (1) Where a *firm* proceeds to execute a transaction for an insistent *client* which is not in accordance with the *personal recommendation* given by the *firm*, the *firm* should communicate to the insistent *client*, in a way which is clear, fair and not misleading, and having regard to the information needs of the insistent *client* so that the *client* is able to understand, the information set out in (2).

- (2) The information which the *firm* should communicate to the insistent

client is:

- (a) that the *firm* has not recommended the transaction and that it will not be in accordance with the *firm's personal recommendation*;
- (b) the reasons why the transaction will not be in accordance with the *firm's personal recommendation*;
- (c) the risks of the transaction proposed by the insistent *client*; and
- (d) the reasons why the *firm* did not recommend that transaction to the *client*.

Acknowledgement from the insistent client

- 9.5A.4 G (1) The *firm* should obtain from the insistent *client* an acknowledgement that:
- (i) the transaction is not in accordance with the *firm's personal recommendation*; and
 - (ii) the transaction is being carried out at the request of the *client*.
- (2) Where possible, the acknowledgment should be in the *client's* own words.

Further personal recommendations given to an insistent client

- 9.5A.5 G Where a *firm* gives a further *personal recommendation* in relation to the transaction proposed by the insistent *client*, the *firm* should make clear to the *client* that this *personal recommendation* is distinct from, but does not affect the conclusions of, the initial *personal recommendation*.

Record keeping

- 9.5A.6 G (1) A *firm* dealing with an insistent *client* should retain a record of:
- (a) the advice and transaction process followed, including the communications with the *client*; and
 - (b) the acknowledgment from the *client* referred to in COBS 9.5A.4G.
- 9.5A.7 G A *firm* dealing with an insistent *client* should also refer to the record keeping requirements in COBS 9.5 (Record keeping and retention periods for suitability records) and SYSC 9.1 (General rules on record-keeping).