

**EXITING THE EUROPEAN UNION: BUSINESS STANDARDS SOURCEBOOKS  
(AMENDMENTS) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; and
  - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. Annex E comes into force on 1 April 2019, immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force, or on exit day as defined in the European Union (Withdrawal) Act 2018, whichever date is the later.
- C. The remainder of this instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

**Amendments to the Handbook**

- C. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Conduct of Business sourcebook (COBS)	Annex A
Insurance: Conduct of Business sourcebook (ICOBS)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Banking: Conduct of Business sourcebook (BCOBS)	Annex D
Claims Management: Conduct of Business sourcebook (CMCOB)	Annex E
Client Assets sourcebook (CASS)	Annex F
Market Conduct sourcebook (MAR)	Annex G
Product Intervention and Product Governance sourcebook (PROD)	Annex H

**Notes**

- D. In this instrument, notes shown as “**Note:**” are intended for the convenience of the reader but do not form part of the legislative text.

**Citation**

- E. This instrument may be cited as the Exiting the European Union: Business Standards Sourcebooks (Amendments) Instrument 2019.

By order of the Board  
28 March 2019

## Annex A

## Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Application

### 1.1 General application

...

Deposits (including structured deposits)

- 1.1.1A R This sourcebook applies to a *firm* with respect to activities carried on in relation to *deposits* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom* only as follows:

	Section / chapter	Application in relation to deposits
(1)	<i>Rules in this sourcebook which <del>implement</del> <u>implemented</u> articles 24, 25, 26, 28 and 30 of MiFID (and related provisions of the MiFID Delegated Directive) (see COBS 1.1.1ADG).</i>	<i>A MiFID investment firm, a third country investment firm and a MiFID optional exemption firm when selling, or advising a client in relation to, a structured deposit.</i>
...		

...

- 1.1.1A ~~EU~~ Article 1(2) of the *MiFID Org Regulation* specifies how its provisions should be read where they apply to firms selling, or  
 B UK advising on, *structured deposits*.

1(2) References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements referred to in Article 1(3) and 1(4) of ~~Directive 2014/65/EU and their implementing provisions as set out under~~ (so far as relevant) in

Chapters II to IV of this Regulation.

1.1.1A R C *A third country investment firm and a MiFID optional exemption firm must also comply with the provisions of the MiFID Org Regulation which relate to the rules which implemented the articles of MiFID referred to in COBS 1.1.1AR(1), as modified by article 1(2) of the MiFID Org Regulation, when selling, or advising a client in relation to, a structured deposit.*

1.1.1A G D *The rules which implemented the provisions of MiFID and the MiFID Delegated Directive referred to in COBS 1.1.1AR(1) can be found in the chapters of COBS in the following table and are followed by a ‘Note:’.*

...

...

~~Auction regulation bidding~~

1.1.1C R *~~COBS 5 (Distance communications) applies to a firm in relation to its carrying on of auction regulation bidding. [deleted]~~*

...

1.1.5 G *PERG 13 contains general guidance on the persons and businesses to which the UK provisions which implemented MiFID apply.*

1.1.6 G *PERG 16 contains general guidance on the businesses to which the UK provisions which implemented AIFMD apply. FUND 1 contains guidance on the types of AIFM.*

## 1.2 Markets in Financial Instruments Directive

### References in COBS to the MiFID Org Regulation

1.2.1 G (1) *This sourcebook contains a number of provisions which ~~transpose~~ transposed MiFID. A rule transposed a provision of MiFID if it is followed by a ‘Note:’ indicating the article of MiFID or the MiFID Delegated Directive which it transposed.*

(2) *In order to help firms which are subject to ~~the~~ those requirements of which implemented MiFID to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the ~~directly applicable~~ MiFID Org Regulation, marked with the status letters “EU” “UK”. ~~The authentic provisions of the MiFID Org Regulation are directly applicable to firms in relation to their MiFID business.~~*

- (3) This sourcebook does not reproduce the *MiFID Org Regulation* in its entirety. A firm to which provisions of the *MiFID Org Regulation* applies should refer to Commission Delegated Regulation (EU) 2017/565 as published in the electronic version of the Official Journal of the European Union for: and as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.
- (a) ~~the authentic version of the applicable articles of the *MiFID Org Regulation*; and~~
- (b) ~~a comprehensive statement of its obligations under the *MiFID Org Regulation*.~~

...

1.2.3 R ...

- (2) In this sourcebook, a word or phrase found in a provision marked “EU” “UK” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
...	
“derivative”	as defined in article 4(1)(49) of <i>MiFID</i> those <i>financial instruments</i> referred to in paragraphs 4 to 10 of Part 1 of <u>Schedule 2 to the <i>Regulated Activities Order</i></u>
...	
“group”	as defined in article 4(1)(34) of <i>MiFID</i> <u>section 421 of the <i>Act</i></u>
...	
“professional client covered by <del>Section 1 of Annex II to Directive 2014/65/EU</del> Part 2 of <u>Schedule 1 to Regulation (EU) No</u>	<i>per se professional client</i>

<u>600/2014</u> ”	
“professional client in accordance with <del>Section 2 of Annex II to Directive 2014/65/EU</del> Part 3 of <u>Schedule 1 to Regulation (EU) No 600/2014</u> ”	<i>elective professional client</i>
...	

...

- 1.2.4 G *Firms* to which provisions of the *MiFID Org Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked “EU” “UK” to assist in interpreting any such references or cross-references.

Interpretation – “in good time”

- 1.2.5 G (1) Certain of the provisions in this sourcebook which ~~implement~~ implemented *MiFID* require *firms* to provide *clients* with information “in good time”.

...

ESMA Guidelines

[**Note:** *ESMA* has issued a number of guidelines under article 16(3) of the *ESMA* Regulation in relation to certain aspects of *MiFID*. These include:

guidelines on certain aspects of the *MiFID* suitability requirements which also include guidelines on conduct of business obligations, 28 May 2018/ESMA35-43-869 (EN). See

~~[[https://www.esma.europa.eu/system/files\\_force/library/esma35\\_43\\_869\\_fr\\_on\\_guidelines\\_on\\_suitability.pdf?download=1](https://www.esma.europa.eu/system/files_force/library/esma35_43_869_fr_on_guidelines_on_suitability.pdf?download=1)];~~

guidelines on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN). See ~~[[https://www.esma.europa.eu/sites/default/files/library/2016-574\\_en\\_guidelines\\_on\\_cross-selling\\_practices.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf)];~~ and

guidelines on complex debt instruments and *structured deposits*, 4 February 2016/ESMA/2015/1787 (EN). See ~~[[https://www.esma.europa.eu/sites/default/files/library/2015-1787-guidelines\\_on\\_complex\\_debt\\_instruments\\_and\\_structured\\_deposits.pdf](https://www.esma.europa.eu/sites/default/files/library/2015-1787-guidelines_on_complex_debt_instruments_and_structured_deposits.pdf)].~~

### 1.3 Insurance distribution

References in COBS to the IDD Regulation

- 1.3.1 G (1) This sourcebook contains a number of provisions which ~~transpose~~ transposed the *IDD*.
- (2) In order to help *firms* which are subject to ~~the~~ those requirements ~~of which implemented~~ the *IDD* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the ~~directly applicable~~ *IDD Regulation*, marked with the status letters “EU” “UK”. ~~The authentic provisions of the *IDD Regulation* are directly applicable to *firms* carrying on *insurance distribution* in relation to *insurance based investment products*.~~
- (3) This sourcebook does not reproduce the *IDD Regulation* in its entirety. A *firm* to which provisions of the *IDD Regulation* applies should refer to Commission Delegated Regulation (EU) 2017/2359 as published in the electronic version of the Official Journal of the European Union for: and as amended by the [Insurance Distribution (Amendment) (EU Exit) Regulations 2019].
- (a) ~~the authentic version of the applicable articles of the *IDD Regulation*; and~~
- (b) ~~a comprehensive statement of its obligations under the *IDD Regulation*.~~

...

1.3.3 R ...

- (2) In this sourcebook, a word or phrase found in a provision marked “EU” “UK” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
...	
“ <del>article 20(1) of Directive (EU) 2016/97</del> ”	<del>COBS 9A.2.3AR or COBS 7.3.4R</del>

“article 30(1) of Directive (EU) 2016/97”	<del>COBS 9A.2.1R and COBS 9A.2.16R</del>
“article 30(2) of Directive (EU) 2016/97”	<del>COBS 10A.2.1R and COBS 10A.2.2R</del>
“article 30(3)(a) (ii) of Directive (EU) 2016/97	<del>COBS 10A.4.1R(2A)</del>
“article 14(1) of this Regulation”	<del>COBS 9A.3.3AEU</del>
“article 185 of Directive 2009/138/EC”	relevant <i>rules</i> in <i>COBS 13</i> , <i>COBS 14</i> and <i>COBS 16.6</i> which are followed by a “ <b>Note:</b> ” referring to article 185 of Solvency II
...	
“Directive (EU) 2016/97”	<i>IDD</i>
...	

...

- 1.3.4 G *Firms* to which provisions of the *IDD Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked “EU” “UK” to assist in interpreting any such references or cross-references.

Interpretation – “in good time”

- 1.3.5 G (1) Certain provisions in this sourcebook which ~~implement~~ implemented *IDD* require *firms* to provide *clients* with information “in good time”. There are also other provisions in this sourcebook which require information to be provided “in good time”, for example, *COBS 6.1ZA.19AR*.

...

...



**1**  
Annex  
**1**

Part 1: What?

Modifications to the general application of COBS according to activities

<b>1.</b>	<b>Eligible counterparty business</b>																	
1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> except, where the <i>eligible counterparty business</i> is in scope of the <i>IDD</i> , those provisions which <del>implement</del> <u>implemented</u> the <i>IDD</i> continue to apply.																
		<table border="1"> <thead> <tr> <th>COBS provision</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>...</td> <td></td> </tr> <tr> <td><i>COBS</i> 4 (other than <i>COBS</i> 4.2, <i>COBS</i> 4.4.1R, <i>COBS</i> 4.5A.9EU <u>4.5A.9UK</u> and <i>COBS</i> 4.7.1AEU <u>4.7.1AUK</u>)</td> <td>Communicating with clients including financial promotions</td> </tr> <tr> <td>...</td> <td></td> </tr> <tr> <td><i>COBS</i> 8A (other than <i>COBS</i> 8A.1.5EU <u>8A.1.5UK</u> to <i>COBS</i> 8A.1.8G)</td> <td>Client agreements (MiFID provisions)</td> </tr> <tr> <td>...</td> <td></td> </tr> <tr> <td><i>COBS</i> 12.2.18EU <u>12.2.18UK</u></td> <td>Labelling of non-independent research</td> </tr> <tr> <td>...</td> <td></td> </tr> </tbody> </table>	COBS provision	Description	...		<i>COBS</i> 4 (other than <i>COBS</i> 4.2, <i>COBS</i> 4.4.1R, <i>COBS</i> 4.5A.9EU <u>4.5A.9UK</u> and <i>COBS</i> 4.7.1AEU <u>4.7.1AUK</u> )	Communicating with clients including financial promotions	...		<i>COBS</i> 8A (other than <i>COBS</i> 8A.1.5EU <u>8A.1.5UK</u> to <i>COBS</i> 8A.1.8G)	Client agreements (MiFID provisions)	...		<i>COBS</i> 12.2.18EU <u>12.2.18UK</u>	Labelling of non-independent research	...	
COBS provision	Description																	
...																		
<i>COBS</i> 4 (other than <i>COBS</i> 4.2, <i>COBS</i> 4.4.1R, <i>COBS</i> 4.5A.9EU <u>4.5A.9UK</u> and <i>COBS</i> 4.7.1AEU <u>4.7.1AUK</u> )	Communicating with clients including financial promotions																	
...																		
<i>COBS</i> 8A (other than <i>COBS</i> 8A.1.5EU <u>8A.1.5UK</u> to <i>COBS</i> 8A.1.8G)	Client agreements (MiFID provisions)																	
...																		
<i>COBS</i> 12.2.18EU <u>12.2.18UK</u>	Labelling of non-independent research																	
...																		
...																		
<b>5.</b>	<b>Consumer credit products</b>																	
5.1	R	If a <i>firm</i> , in relation to its <i>MiFID business</i> , offers an <i>investment service</i> as part of a financial product that is subject to other provisions of <del>EU</del> <u>EU-derived</u> law related to <i>credit institutions</i> and consumer credits with respect to information requirements, that service is not subject to the rules in this sourcebook that <del>implement</del> <u>implemented</u> articles 24(3), (4) and (5) of <i>MiFID</i> .																

		[ <b>Note:</b> article 24(6) of <i>MiFID</i> ]
...		
<b>5A.</b>	<b>Mortgages and mortgage bonds</b>	
5A.1	R	The <i>rule</i> in paragraph 5A.2R applies in relation to an <i>MCD credit agreement</i> with a <i>consumer</i> which is subject to the provisions concerning the creditworthiness assessment of <i>consumers</i> in Chapter 6 of the <i>MCD</i> (as <u>which were</u> transposed in <i>MCOB 11</i> and <i>MCOB 11A</i> ).
5A.2	R	If an agreement with a <i>consumer</i> within paragraph 5A.1R has as a pre-requisite the provision to that same <i>consumer</i> of an <i>investment service</i> in relation to mortgage bonds satisfying the conditions in paragraph 5A.3R in order for the loan to be payable, refinanced or redeemed, that <i>investment service</i> is not subject to the <i>rules</i> in this sourcebook which <del>implement</del> <u>implemented</u> article 25 of <i>MiFID</i> .
...		
<b>8.</b>	<b>PRIIPs Regulation</b> <del>[deleted]</del>	
8.1	R	<del>The <i>general application rule</i> is modified so that a <i>firm</i> will not be subject to <i>COBS</i> to the extent that it would be contrary to the <i>United Kingdom's</i> obligations in respect of the <i>PRIIPs Regulation</i>.</del>

Part 2: Where?

Modifications to the general application according to location

<b>1.</b>	<b>EEA territorial scope rule: compatibility with European law</b> <del>[deleted]</del>		
1.1	R	(1)	<del>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).</del>
		(2)	<del>This <i>rule</i> overrides every other <i>rule</i> in this sourcebook.</del>
1.2	R		<del>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</del>

		paragraph 7.3 of Part 3 for <i>guidance</i> on this).
		<del>[Note: article 3(3) of, and Annex to, the Electronic Commerce Directive]</del>
<b>2.</b>	<b>Business with UK clients from overseas establishments</b>	
...		
2.2	G	<del>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. [deleted]</del>

## Part 3: Guidance

<b>1.</b>	<b>The main extensions, modifications and restrictions to the general application</b>	
...		
1.2	G	<del>The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the general application of this sourcebook, particularly in relation to territorial scope. [deleted]</del>
1.3	G	<del>In particular, certain <u>Certain</u> chapters of this sourcebook apply only to <i>firms</i> in relation to their <i>MiFID</i>, <i>equivalent third country</i> or <i>optional exemption business</i> and, in some of these chapters, specified <i>insurance distribution activities</i> (sometimes only in relation to <i>insurance-based investment products</i>) while others apply only to <i>firms' designated investment business</i> which is not <i>MiFID</i>, <i>equivalent third country</i> or <i>optional exemption business</i> or, in some of these chapters, certain <i>insurance distribution activities</i>.</del>
1.4	G	<del><i>COBS 18</i> (Specialist regimes) contains specialist regimes which modify the application of the provisions in this sourcebook for particular types of <i>firm</i> and business. To the extent that they are in conflict, the <i>rules</i> in <i>COBS 18</i> on the application of the provisions in this sourcebook should be understood as overriding any other provision (whether in <i>COBS 1</i> or an individual chapter) on the application of <i>COBS</i>. For the avoidance of doubt, nothing in <i>COBS 18</i> modifies the effect of the <i>EEA territorial scope rule</i>.</del>

<b>2.</b>	<b>The Single Market Directives and other directives [deleted]</b>	
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 <i>UK firm</i> is doing business in a <i>UK establishment</i> for a <i>client</i> located in the <i>United Kingdom</i> in relation to a <i>United Kingdom</i> product. However, if there is a non-UK element, the <i>firm</i> should consider whether:
		(1) it is subject to the directive (in general, directives only apply to <i>UK firms</i> and <i>EEA firms</i> , but the implementing provisions may not treat non- <i>EEA firms</i> more favourably than <i>EEA firms</i> );
		(2) the business it is performing is subject to the directive; and
		(3) 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 general application of this sourcebook.
2.3	G	When considering a particular situation, a <i>firm</i> should also consider whether two or more directives apply.
<b>3.</b>	<b>MiFID: effect on territorial scope [deleted]</b>	
3.1	G	<i>PERG 13</i> contains general <i>guidance</i> on the <i>persons</i> and <i>businesses</i> 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 Delegated Directive</i> which it implements.
3.3	G	For a <i>UK 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 <i>United Kingdom</i> . They also generally apply to its <i>MiFID business</i> carried on from

		an establishment in another <i>EEA State</i> , but only where that business is not carried on within the territory of that State. (See articles 34(1), 35(1) and 35(8) of <i>MiFID</i> )
3.4	G	For an <i>EEA MiFID investment firm</i> , rules 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 35(1) and 35(8) of <i>MiFID</i> )
3.5	G	However, the <i>rules on investment research and non-independent research</i> ( <i>COBS 12.2</i> , except for <i>COBS 12.2.18EU</i> ) and the <i>rules on personal transactions</i> ( <i>COBS 11.7A</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> .
3.6	G	<i>Firms</i> to which <i>MiFID</i> applies or which are subject to requirements in <i>MiFID</i> (including <i>MiFID optional exemption firms</i> ) should also have regard to the <i>rules and guidance</i> in <i>COBS 1.2</i> .
<b>4.</b>	<b>Insurance Distribution Directive: effect on territorial scope</b> [deleted]	
4.1	G	The <i>IDD's</i> scope covers most <i>firms</i> carrying on most types of <i>insurance distribution</i> in relation to risks and commitments located in an <i>EEA State</i> .
4.1A	G	The <i>rules</i> in this sourcebook within the Directive's scope are those relating to <i>life policies</i> that implement the minimum requirements in articles 1(4), 17, 18, 19, 20, 21, 23, 24(1) to (3) and (6), 29, and 30 of the <i>IDD</i> are set out in:
		(1) <i>COBS 2.1.1R</i> , <i>COBS 2.2A</i> and <i>COBS 2.3A</i> (Conduct of business obligations);
		(2) <i>COBS 4</i> (Communicating with clients, including financial promotions);
		(3) <i>COBS 6.1ZA</i> (Information about the firm and compensation information ( <i>MiFID</i> and insurance distribution provisions));
		(4) <i>COBS 7</i> (Insurance distribution);

		(5)	<i>COBS 8</i> (Client agreements);
		(6)	<i>COBS 9</i> (Suitability (including basic advice) (other than MiFID and insurance-based investment products provisions)) and <i>COBS 9A</i> (Suitability (MiFID and insurance-based investment products provisions));
		(7)	<i>COBS 10A</i> (Appropriateness (for non-advised services));
		(8)	<i>COBS 14.2</i> (Providing product information to clients); and
		(9)	<i>COBS 16A.2</i> (General client reporting and record keeping requirements).
4.1B	G	A Member State is entitled to impose additional requirements within the <i>IDD</i> 's scope in the 'general good' (see recital 52 to, and article 22 of, the <i>IDD</i> ).	
4.2	G	The <i>IDD</i> places responsibility for requirements in this sourcebook within the Directive's scope (both minimum and additional requirements) on the <i>Home State</i> , except:	
		(1)	in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis) (see recital 22 to, and article 7(2) of, the <i>IDD</i> ). So <i>firms</i> operating under the freedom of establishment in the <i>UK</i> must adhere to the requirements in the <i>UK</i> , regardless of the habitual residence of the customer (other than in the situations described in (2)); and
		(2)	where a Member State has:
		(a)	introduced the stricter requirements in article 29(3) of the <i>IDD</i> ; or
		(b)	introduced requirements which have not made use of the derogation in article 30(3) of the <i>IDD</i> to allow <i>firms</i> not to carry out an appropriateness assessment in relation to a non-advised sale of an <i>insurance-based</i>

				<i>investment product,</i>
				<i>firms</i> concluding contracts with customers having their habitual residence or establishment in that Member State must adhere to the more onerous requirements in (a) or (b) in force in that State.
4.3	G	Accordingly, the general rules on territorial scope are not modified by the <i>IDD</i> except:		
		(1)	for an <i>EEA firm</i> providing passported activities under the Directive in the <i>United Kingdom</i> , the additional <i>rules</i> within the Directive's scope have their unmodified territorial scope unless the <i>Home State</i> imposes measures of like effect.	
		(2)	for <i>insurance distribution</i> business carried on by <i>insurers</i> :	
			(a)	minimum and additional requirements apply to a <i>UK firm</i> unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Host State regulator</i> ; and
			(b)	paragraphs (1), (3), (4) and 4.4G, below, apply in the same way unless the responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Home State regulator</i> .
		(3)	for a <i>UK firm</i> concluding contracts with customers having their habitual residence or establishment another Member State, it must comply with the requirements of that Member State falling within 4.2G(2);	
		(4)	for an <i>EEA firm</i> providing passported activities in the <i>United Kingdom</i> under the <i>IDD</i> the <i>rules</i> in <i>COBS</i> which give effect to article 29(3) apply, where the <i>client</i> has their habitual residence or establishment in the <i>UK</i> , when it is operating under the freedom to provide services.	
4.4	G	An <i>EEA firm</i> acting as the principal of an <i>appointed representative</i> carrying on <i>insurance distribution</i>		

		<i>activities</i> from an establishment in the <i>UK</i> is required to ensure that its <i>appointed representative</i> complies with this sourcebook.
<b>5.</b>	<b>Solvency II Directive: effect on territorial scope [deleted]</b>	
5.1	G	The <i>Solvency II Directive's</i> scope covers <i>long-term insurers</i> . The <i>rules</i> in this sourcebook within the <i>Solvency II Directive's</i> scope are the <i>cancellation rules (COBS 15)</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>contract of insurance</i> . The <i>Solvency II Directive</i> 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 <i>policyholder</i> 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 <i>Solvency II Directive</i> provides that the applicable information rules and cancellation rules shall be laid down 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 <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the <i>Solvency II Directive</i> explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 156, 180, 185 and 186 of the <i>Solvency II Directive</i> )
<b>6.</b>	<b>Distance Marketing Directive: effect on territorial scope [deleted]</b>	
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 cancellation rules ( <i>COBS 15</i> ) and the other specific <i>rules</i> implementing the Directive contained in <i>COBS 5 (Distance communications)</i> .
6.2	G	In the <i>FCA'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



		<del>'country of establishment' basis). (See article 16 of the <i>Distance Marketing Directive</i>)</del>	
6.3	G	<del>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).</del>	
6.4	G	<del>Conversely, the territorial scope of the relevant <i>rules</i> in this sourcebook is modified as necessary so that they do not apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in another <i>EEA</i> state if the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA</i> state.</del>	
6.5	G	<del>In the <i>FCA's</i> view:</del>	
		(1)	<del>the 'country of origin' basis of the Directive is in line with that of the <i>Electronic Commerce Directive</i> and the <i>IDD</i>; (See recital 6 of the <i>Distance Marketing Directive</i>)</del>
		(2)	<del>for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Solvency II 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 cancellation rules (<i>COBS 15</i>) derived from the <i>Solvency II 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>Distance Marketing Directive</i>)</del>
		(3)	<del>[deleted]</del>
7.	<b>Electronic Commerce Directive: effect on territorial scope</b> <del>[deleted]</del>		
7.1	G	<del>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.</del>	
7.2	G	<del>A key element of the Directive is the ability of a <i>person</i> from one <i>EEA</i> state to carry on an <i>electronic commerce activity</i> freely into another <i>EEA</i> state. Accordingly, the territorial application of the <i>rules</i> in this sourcebook is modified so that they apply at least to a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an</del>	

		<i>establishment in the United Kingdom with or for a person in the United Kingdom or another EEA state. Conversely, a firm that is a national of the UK or another EEA State, carrying on an electronic commerce activity from an establishment in another EEA State with or for a person in the United Kingdom need not comply with the rules in this sourcebook. (See article 3(1) and (2) of the 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 FCA has adopted for this sourcebook. The derogation applies to an insurer that is authorised under and carrying on an electronic commerce activity within the scope of the Solvency II Directive and permits EEA States to continue to apply their advertising rules in the ‘general good’. Where the derogation applies, the financial promotion rules continue to apply for incoming electronic commerce activities (unless the firm’s ‘country of origin’ applies rules of like effect) but do not apply for outgoing electronic commerce activities. (See article 3(3) and Annex, fourth indent of the Electronic Commerce Directive; Annex to European Commission Discussion Paper MARKT/2541/03)	
7.4	G	In the FCA’s view, the Directive’s effect on the territorial scope of this sourcebook (including the use of the ‘insurance derogation’):	
		(1)	is in line with the Distance Marketing Directive and the IDD; and
		(2)	overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
7.5	G	The ‘derogations’ in the Directive may enable other EEA States to adopt a different approach to the United Kingdom in certain fields. (See recital 19 of the IDD, recital 6 of the Distance Marketing Directive, article 3 and Annex of the Electronic Commerce Directive)	
<b>8.</b>	<b>Investor Compensation Directive [deleted]</b>		
8.1	G	(1)	The Investor Compensation Directive generally requires MiFID investment firms to belong to a compensation scheme established in accordance with the Directive. The rules in this sourcebook that implement the Directive are those (i) requiring MiFID investment firms;

			including their branches, to make available specified information about the compensation scheme to which they belong and specifying the language in which such information must be provided ( <i>COBS 6.1.16 R</i> ) and (ii) restricting mention of the compensation scheme in advertising to factual references ( <i>COBS 4.2.5G</i> ).
		(2)	In the <i>FCA'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 their standard territorial scope to an <i>EEA MiFID investment firm</i> providing services in the <i>UK</i> unless its <i>Home State</i> applies rules of like effect.
<b>9.</b>	<b>UCITS Directive: effect on territorial scope [deleted]</b>		
9.1	G	The <i>UCITS Directive</i> covers undertakings for collective investment in transferable securities ( <i>UCITS</i> ) meeting the requirements of the Directive, and their <i>management companies</i> and <i>depositories</i> . The <i>rules</i> in this sourcebook within the Directive's scope (all of which will apply to a <i>management company</i> ) are those in:	
		(1)	<i>COBS 2.1</i> (Acting honestly, fairly and professionally);
		(2)	<i>COBS 2.3</i> (Inducements);
		(3)	<i>COBS 4.2.1R</i> (The fair, clear and not misleading rule);
		(4)	<i>COBS 4.3.1R</i> (Financial promotions to be identifiable as such);
		(5)	<i>COBS 4.13</i> (UCITS);
		(6)	<i>COBS 11.2B</i> (Best execution for UCITS management companies);
		(7)	<i>COBS 11.3</i> (Client order handling);
		(8)	<i>COBS 11.7</i> (Personal account dealing);

		(9)	<i>COBS 14 (Providing product information to clients) relating to the provision of key investor information by the management company (in addition to applying to a management company, COBS 14.2 also applies to an ICVC that is a UCITS scheme); and</i>
		(10)	<i>COBS 16.2 (Occasional reporting).</i>
9.1A	G		The majority of the <i>COBS rules</i> referred to in paragraph 9.1 are rules of conduct which each <i>EEA State</i> must draw up under article 14.1 of the <i>UCITS Directive</i> which <i>management companies</i> authorised in that State must observe at all times. The exceptions are <i>COBS 4</i> and <i>COBS 14</i> in so far as they relate to a <i>UCITS scheme</i> , which form part of the <i>FCA's fund application rules</i> and which are the responsibility of the <i>UCITS Home State</i> (for a <i>UCITS scheme</i> , the <i>FCA</i> —see <i>COLL 12.3.5R (COLL fund rules under the management company passport: the fund application rules)</i> and article 19 of the <i>UCITS Directive</i> ).
9.1B	G		Where a <i>management company</i> is providing <i>collective portfolio management services</i> for a <i>UCITS</i> established in a different <i>EEA State</i> , responsibility for its compliance with the applicable rules of conduct drawn up under article 14 will generally be for the <i>management company's Home State</i> , but when a <i>branch</i> is established it will be the responsibility of the <i>Host Member State (UCITS Home State)</i> (see articles 17(4) and 17(5) of the <i>UCITS Directive</i> ).
9.1C	G		Under the <i>UCITS Directive</i> certain <i>Host State</i> marketing and <i>MiFID</i> specific rules might also apply to a <i>management company</i> providing <i>collective portfolio management services</i> for a <i>UCITS</i> established in a different <i>EEA State</i> . Consequently, an <i>EEA UCITS management company</i> should note that, under <i>COBS</i> , certain of the <i>FCA's rules</i> apply to it, including the <i>financial promotion rules</i> . <i>COBS 4.13 (UCITS)</i> is concerned with marketing communications for <i>UCITS schemes</i> and <i>EEA UCITS schemes</i> .
9.1D	G		<i>EEA UCITS management companies</i> should be aware that there is a special narrower application of <i>COBS</i> for <i>scheme management activity</i> provided for by <i>COBS 18.5B (UCITS management companies)</i> .
9.2	G		[deleted]

9.3	G	The Directive does not affect the territorial scope of <i>rules</i> as they apply to an intermediary (that is not a <i>management company</i> ) selling <i>units</i> of a <i>UCITS</i> .	
		[ <del>Note: articles 12, 14, 17, 18, 19 and 94 of the <i>UCITS Directive</i></del> ]	
<b>10.</b>	<b>AIFMD: effect on territorial scope [deleted]</b>		
10.1	G	<del><i>PERG</i> 16 contains general <i>guidance</i> on the businesses to which <i>AIFMD</i> applies. <i>FUND</i> 1 contains <i>guidance</i> on the types of <i>AIFM</i>.</del>	
10.2	G	The only <i>rule</i> in this sourcebook which implements <i>AIFMD</i> is <i>COBS</i> 2.1.4R, which applies to:	
		(1)	a full-scope <i>UK AIFM</i> operating from an establishment in the <i>UK</i> or a <i>branch</i> in another <i>EEA State</i> ; and
		(2)	an <i>Incoming EEA AIFM branch</i> .
10.3	G	The other <i>rules</i> in <i>COBS</i> which apply to a <i>full-scope UK AIFM</i> or <i>incoming EEA AIFM</i> (including an <i>AIFM qualifier</i> ) fall outside the scope of <i>AIFMD</i> and are, therefore, not affected by its territorial scope.	
10.4	G	<i>Incoming EEA AIFM branches</i> should be aware that there is a special narrower application of <i>COBS</i> for <i>AIFM investment management</i> functions provided for by <i>COBS</i> 18.5A (Full-scope <i>UK AIFMs</i> and <i>incoming EEA AIFM branches</i> ).	

## 2 Conduct of business obligations

### 2.1 Acting honestly, fairly and professionally

The client's best interests rule

#### 2.1.1 R ...

- (3) For a *management company*, this *rule* applies in relation to any *UCITS scheme* ~~or *EEA UCITS scheme*~~ the *firm* manages.

[~~Note: article 24(1) of *MiFID*, article 17(1) of the *IDD* and article 14(1)(a) and (b) of the *UCITS Directive*~~]

...

AIFMs' best interests rules

- 2.1.4 R A *full-scope UK AIFM* ~~and an incoming EEA AIFM branch~~ must, for all *AIFs* it manages:

...

[**Note:** article 12(1)(a), (b) and (f) and article 12(1) last paragraph of *AIFMD*]

...

## 2.3 Inducements relating to business other than MiFID, equivalent third country or optional exemption business and insurance-based investment products

...

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* carried on for a *client* other than:

...

- (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:

...

- (b) 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, before the provision of the service;

- (i) this requirement only applies to business other than the carrying on by a *UK UCITS management company* ~~or EEA UCITS management company~~ of the *collective portfolio management* activities of investment management and administration for the relevant *scheme* if it includes:

...

- (ii) where this requirement applies to business other than the carrying on by a *UK UCITS management company* ~~or EEA UCITS management company~~ of the *collective portfolio management* activities of investment management and administration for the relevant *scheme*, a *firm* is not required to make a disclosure to the client in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-monetary benefits in *COBS 2.3.15G* as though that table were part of this *rule* for this purpose only;

...

- (c) in relation to the carrying on by a *UK UCITS management company* ~~or EEA UCITS management company~~ of the collective portfolio management activities of investment management and administration for the relevant *scheme* or when carrying on a *regulated activity* in relation to a *retail investment product*, or when *advising on P2P agreements*, 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

...

[**Note:** articles 29(1) and 29(2) of the *UCITS implementing Directive*]

- 2.3.1A R *COBS 2.3.1R* applies to a *UK UCITS management company* ~~and EEA UCITS management company~~ when providing *collective portfolio management* services, as if references to a *client*, were references to any *UCITS* it manages.

[**Note:** article 29(1) of the *UCITS implementing Directive*]

...

- 2.3.2A R *COBS 2.3.2R* applies to a *UK UCITS management company* ~~and EEA UCITS management company~~ when providing *collective portfolio management* services, as if references to a *client* were references to a *Unitholder* of the *scheme*.

[**Note:** article 29(2) of the *UCITS implementing Directive*]

...

## 2.3A Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products

...

- 2.3A.6 R (1) *COBS* 2.3A.5R does not apply to:
- (a) a fee, commission or non-monetary benefit which:
    - (i) is designed to enhance the quality of the relevant service to the *client* (see *COBS* 2.3A.8R and, also for an *insurance-based investment product*, *COBS* ~~2.3A.9AEU~~ 2.3A.9AUK); and

...

...

...

...

Additional requirements for the assessment of inducements: insurance-based investment products

2.3A.9 EU  
A UK

...

2.3A.9 R *COBS* ~~2.3A.9AEU~~ 2.3A.9AUK applies as if it was a *rule* to firms in relation to *insurance distribution activities* to which the *IDD Regulation* does not apply.

...

- 2.3A.1 R In implementing the requirements of *COBS* 2.3A.10R to *COBS* 2.3A.12R, a *firm* must take into account the costs and charges *rules set out in*:
- (1) (for *MiFID, equivalent third country or optional exemption business*) ~~in article 24(4)(c) of *MiFID*~~ *COBS* 6.1ZA.11R and *COBS* 6.1ZA.12R and article 50 of the *MiFID Org Regulation* (see ~~*COBS* 6.1ZA.11R to *COBS* 6.1ZA.13R and *COBS* 6.1ZA.14EU~~ 6.1ZA.14UK); and
  - (2) (for *insurance-based investment products*) ~~in~~ *COBS* 6.1ZA.11R to *COBS* 6.1ZA.13R and *COBS*



## 6.1ZA.15AR.

[**Note:** article 11(5) of the *MiFID Delegated Directive*]

...

Acceptable minor non-monetary benefits

2.3A.1 R An acceptable minor non-monetary benefit is one which:  
9

- (1) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way (where applicable, in accordance with ~~article 11(5)(a) of the *MiFID Delegated Directive* (see COBS 2.3A.10R)~~);

...

...

## 2.3C Research and execution services

Application

2.3C.1 R This section applies to an *investment firm* providing execution services to:

...

- (2) an *investment firm* authorised under the *UK provisions which implemented MiFID* that is not within (1); or

...

- (7) ~~an *incoming EEA AIFM branch*; or~~ [deleted]

...

...

## 2.4 Agent as client and reliance on others

...

2.4.2 G This section is not relevant to, nor does it affect:

...

- (3) any obligation imposed on a *firm* by article 26 of *MiFIR* or ~~RTS 22~~ *MiFID RTS 22*.

...

## 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 provide an *investment or ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:

...

- (b) an *investment firm* that is:
- (i) a ~~firm or authorised in another EEA State~~; and
  - (ii) subject to equivalent relevant requirements.

...

- 2.4.5 G (1) If F1 is required to perform a suitability assessment or an appropriateness assessment under *COBS 9A or COBS 10A*, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in *COBS 9A (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 10A*, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in *COBS 10A.2*, ~~or equivalent requirements in another EEA State~~ in performing that assessment.

## Reliance on other insurance distributors

- 2.4.5A R Where a *firm* carrying on *insurance distribution activities* in relation to an *insurance-based investment product* is required to perform an appropriateness assessment under *COBS 10A*, it may rely upon:
- (1) a suitability assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing suitability in *COBS 9A* ~~or equivalent requirements in another EEA State~~; or
  - (2) an appropriateness assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing appropriateness in *COBS 10A.2* ~~or~~

~~equivalent requirements in another EEA State,~~

in performing that assessment.

[**Note:** article 30(2) of the *IDD*]

...

### 3 Client categorisation

#### 3.1 Application

...

3.1.2A R Subject to *COBS* 3.1.3R and *COBS* 3.6.4CR, in this chapter provisions marked “~~EU~~” “UK” apply to a *firm’s* business other than *MiFID* business as if they were *rules*.

...

#### 3.2 Clients

General definition

3.2.1 R ...

(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~~).

...

...

#### 3.3 General notifications

3.3.1A ~~EU~~  
UK Articles 45(1) and (2) of the *MiFID Org Regulation* require *firms* to provide *clients* with specified information concerning *client* categorisation.

45(1) Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised as required by ~~Directive 2014/65/EU~~ UK law on markets in financial instruments, of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with that Directive.

...

- 3.3.1B R The information referred to in article 45(2) of the *MiFID Org Regulation* (as reproduced at ~~COBS 3.3.1AEU~~ 3.3.1AUK) must be provided to *clients* prior to any provision of services.

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

...

### 3.5 Professional clients

...

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 in the UK~~ or a third country ~~and whether or not authorised by reference to a directive:~~

...

...

- 3.5.3E R (1) A *firm* may treat a non-UK local public authority or municipality as an *elective professional client* if it complies with *COBS 3.5.3R(1)* and *COBS 3.5.3R(3)* and, in addition, applies the ~~relevant~~ “quantitative test” ~~under paragraph (2) that is applied in relation to MiFID or equivalent third country business under COBS 3.5.3R(2).~~

- (2) ~~The relevant “quantitative test” under this rule is either:~~

- (a) ~~where the local public authority or municipality is established in an EEA State and the EEA State has adopted alternative or additional criteria to those listed in the fifth paragraph to section II.1 of annex II to MiFID, those criteria as set out in the law or measures of that EEA State; or~~
- (b) ~~in any other case the same “quantitative test” that is applied in relation to MiFID or equivalent third country business under COBS~~

3.5.3R(2). [deleted]

...

- 3.5.5 G The fitness test applied to managers and directors of ~~entities licensed under directives in the financial field~~ relevant firms 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*]

...

### 3.6 Eligible counterparties

...

#### 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~~ the UK that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

...

- (4) a *collective investment scheme* authorised under the UK provisions which implemented the UCITS Directive or its management company;

...

- (6) another financial institution authorised or regulated ~~under EU legislation or the national law of an EEA State~~ under the law of the United Kingdom;

...

...

#### Elective eligible counterparties

- 3.6.4 R A *firm* may treat a *client* as an *elective eligible counterparty* in relation to business other than *MiFID* or *equivalent third country business* if:

...

- (2) the *firm* adheres to the procedure set out at *COBS* ~~3.6.4BEU~~ 3.6.4BUK.

- 3.6.4A R Provided that it adheres to the procedure set out at *COBS* ~~3.6.4BEU~~ 3.6.4BUK, a *firm* may treat a *client* as an *elective*

*eligible counterparty* in relation to *MiFID* or *equivalent third country business* if the *client*:

...

- 3.6.4B EU Article 71(5) of the *MiFID Org Regulation* sets out the procedure  
UK to be followed where a *client* requests to be treated as an *eligible counterparty*.

71(5) Where a client requests to be treated as an eligible counterparty, in accordance with ~~Article 30(3) of Directive 2014/65/EU~~ [COBS 3.6.4AR], the following procedure shall be followed:

...

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

...

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. [deleted]~~

[**Note:** first paragraph of article 30(3) of *MiFID*]

### 3.7 Providing clients with a higher level of protection

...

- 3.7.3A EU Article 45(3) of the *MiFID Org Regulation* sets out provisions in  
UK respect of giving *clients* a higher level of protection.

45(3) Investment firms may, either on their own initiative or at the request of the client concerned treat a client in the following manner:

- (a) as a professional or retail client where that client might otherwise be classified as an eligible counterparty pursuant to ~~Article 30(2) of Directive 2014/65/EU~~ [COBS 3.6.2R];
- (b) a retail client where that client that is considered a professional client pursuant to ~~Section I of Annex II to Directive 2014/65/EU~~ Part 2 of Schedule 1 to

Regulation (EU) No 600/2014.

3.7.3B EU Article 71(2) to (4) of the *MiFID Org Regulation* sets out  
UK provisions applying to *eligible counterparties* requesting a higher level of protection.

- 71(2) Where, pursuant to ~~the second subparagraph of Article 30(2) of that Directive 2014/65/EU [COBS 3.7.1R],~~ an eligible counterparty requests treatment as a client whose business with an investment firm is subject to Articles 24, 25, 27 and 28 of that Directive rules in the Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which were relied on immediately before exit day to implement Articles 24, 25, 27 and 28 of Directive 2014/65/EU (“the relevant rules”), the request should be made in writing, and shall indicate whether the treatment as retail client or professional client refers to one or more investment services or transactions, or one or more types of transaction or product.
- (3) Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to ~~Articles 24, 25, 27 and 28 of Directive 2014/65/EU~~ the relevant rules, but does not expressly request treatment as a retail client, the firm shall treat that eligible counterparty as a professional client.
- (4) Where the eligible counterparty expressly requests treatment as a retail client, the investment firm shall treat the eligible counterparty as a retail client, applying the provisions in respect of requests of non-professional treatment specified in ~~the second, third and fourth subparagraphs of Section I of Annex II to Directive 2014/65/EU~~ paragraph 3(b), (c), (d) and 4 of Schedule 1 to Regulation (EU) No 600/2014.

...

## 4 Communicating with clients, including financial promotions

### 4.1 Application

...

~~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 an *EEA key investor information document* but will, for example, apply to a *firm* (including an *EEA UCITS management company*) when *marketing* in the *United Kingdom* the *units* of an *EEA UCITS scheme* that is a *recognised scheme*.
- (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* other than to the extent *COBS 4.12 (Restrictions on the promotion of non-mainstream pooled investments)* applies.  
[deleted]

...

### 4.3 Financial promotions to be identifiable as such

4.3.1 ...

- (4) In the case of a marketing communication that relates to:
- (a) a *UCITS scheme* or an *EEA UCITS scheme*, or

...

(2) and (3) do not limit the application of this *rule*.

### 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 *Investor Compensation Directive* is limited to a factual reference to the scheme.

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

...

### 4.5A Communicating with clients (including past, simulated past and future performance) (MiFID provisions)

...



4.5A.2 R Provisions in this section marked “~~EU~~” “UK” apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).

4.5A.2 G The effect of *GEN 2.2.22AR* is that provisions in this section  
A marked “~~EU~~” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

General requirements

4.5A.3 ~~EU~~ ...  
UK

...

Comparative information

4.5A.7 ~~EU~~ ...  
UK

Referring to tax

4.5A.8 ~~EU~~ ...  
UK

Consistent financial promotions

4.5A.9 ~~EU~~ ...  
UK

Past performance

4.5A.1 ~~EU~~ 44(4) Where the information contains an indication of past  
0 UK performance of a financial instrument, a financial index  
or an investment service, investment firms shall ensure  
that the following conditions are satisfied:  
  
...  
  
(e) where the indication relies on figures  
denominated in a currency other than ~~that of the~~  
~~Member State in which the retail client or~~  
~~potential retail client is resident~~ pounds sterling,  
the currency is clearly stated, together with a  
warning that the return may increase or decrease  
as a result of currency fluctuations;  
  
...

[**Note:** article 44(4) of the *MiFID Org Regulation*]

...

## Simulated past performance

4.5A.1 ~~EU~~  
2 UK

...

4.5A.1 G For the purposes of ~~COBS 4.5A.12EU~~ 4.5A.12UK, the conditions referred to in article 44(5)(b) can be found reproduced in ~~COBS 4.5A.10EU~~ 4.5A.10UK.

## Future performance

4.5A.1 ~~EU~~  
4 UK

...

4.5A.1 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 requirements regarding information on the future performance in ~~COBS 4.5A.14EU~~ 4.5A.14UK. For example, objective data in relation to *EIS shares* may be difficult to obtain.

## Information that uses the name of any competent authority

4.5A.1 ~~EU~~  
6 UK

...

**4.6 Past, simulated past and future performance (non-MiFID provisions)**

...

## 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:

...

- (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~~ pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

...

...

## 4.7 Direct offer financial promotions

### Application

- 4.7.-1 G (1) ~~COBS 4.7.-1AEU~~ 4.7.-1AUK to COBS 4.7.1R contain provisions on the communication of *direct offer financial promotions*.
- (2) In broad terms:
- (a) ~~COBS 4.7.-1AEU~~ 4.7.-1AUK is relevant to a *firm* communicating a *direct offer financial promotion* in relation to its *MiFID, equivalent third country or optional exemption business*; and
- (b) ...
- (3) However, a *MiFID investment firm, third country investment firm or MiFID optional exemption firm* which is subject to the requirements in ~~COBS 4.7.-1AEU~~ 4.7.-1AUK may be subject to the *rule* in COBS 4.7.1R to the extent that it communicates a *direct offer financial promotion*:

...

Direct offer financial promotions relating to MiFID, equivalent third country or optional exemption business

4.7.-1A ~~EU~~ 46(6) ...  
UK

Effect of provisions marked “~~EU~~” “UK” for third country investment firms and MiFID optional exemptions firms

4.7.-1B R Provisions in this section marked “~~EU~~” “UK” apply in relation to *MiFID optional exemption business* as if they were *rules* (see COBS 1.2.2G).

4.7.-1C G The effect of GEN 2.2.22AR is that provisions in this section marked “~~EU~~” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

4.7.-1D G For the purposes of ~~COBS 4.7.-1AEU~~ 4.7.-1AUK, the provisions of articles 47 to 50 of the *MiFID Org Regulation* can be found reproduced in COBS 6.1ZA and COBS 14.3A.

...

4.7.5A G COBS 4.13.2R (Marketing communications relating to UCITS schemes or ~~EEA UCITS schemes~~) and COBS 4.13.3R (Marketing

communications relating to feeder UCITS) contain additional disclosure requirements for *firms* in relation to marketing communications (other than *key investor information*) that concern particular investment strategies of a *UCITS scheme* or ~~EEA UCITS scheme~~.

...

**4.12 Restrictions on the promotion of non-mainstream pooled investments**

...

Exemptions from the restrictions on the promotion of non-mainstream pooled investments

4.12.4 R ...

(5)

Title of Exemption	Promotion to:	Promotion of a non-mainstream pooled investment which is:
...		
3. Enterprise and charitable funds	<p>A <i>person</i> who is eligible to participate or invest in an arrangement constituted under:</p> <p>...</p> <p>(4) the Regulation on European Venture Capital Funds ('EuVECA') or the <u>RVECA Regulation</u> ('RVECAS'); or</p> <p>(5) the Regulation on European Social Entrepreneurship Funds ('EuSEFs') or the <u>SEF</u></p>	Any <i>non-mainstream pooled investment</i> which is such an arrangement.

	<u>Regulation</u> (‘SEFs’).	
...		
12. Non-recognised UCITS [deleted]	<del>Any person.</del>	<p>Any EEA UCITS scheme which is not a recognised scheme, provided the following requirements are met:</p> <p>(1) the <i>firm</i> considers it is likely to be suitable for that <i>client</i> based on a preliminary assessment of the <i>client's</i> profile and objectives; and</p> <p>(2) the <i>firm</i> provides that <i>client</i> with the same product information as it would be required to provide by COBS 14.2 if the scheme was a recognised scheme.</p> <p>[See COBS 4.12.5G (2).]</p>

...

## Advice and preliminary assessment of suitability

4.12.5 G ...

- (2) (a) A *firm* which wishes to rely on exemptions 2 (certified high net worth investors), or 9 (self-certified sophisticated investors) or 12 (non-recognised UCITS), as provided under COBS 4.12.4R (5), should note that these exemptions require a preliminary assessment of suitability before promotion of the *non-mainstream pooled investment* to clients (in addition to other requirements).

...

...

**4.13 UCITS**

## Application

- 4.13.1 R (1) This section applies to a *firm* in relation to a communication to a *client*, including an *excluded communication*, that is a marketing communication within the meaning of the *UCITS Directive*.
- (2) This section does not apply to:
- (a) *image advertising*; or
  - (b) the *instrument constituting the fund*, the *prospectus*, the *key investor information* or the periodic reports and accounts of ~~either a UCITS scheme or an EEA UCITS scheme~~.

[**Note:** recital (58) of the *UCITS Directive*]

Marketing communications relating to UCITS schemes ~~or EEA UCITS schemes~~

- 4.13.2 R (1) A *firm* must ensure that a marketing communication that comprises an invitation to purchase *units in a UCITS scheme or EEA UCITS scheme* and that contains specific information about the *scheme*:
- (a) makes no statement that contradicts or diminishes the significance of the information contained in the *prospectus* and the *key investor information document or EEA key investor information document* for the *scheme*;
  - (b) indicates that a *prospectus* exists for the *scheme* and that the *key investor information document or EEA key investor information document* is available; and
  - (c) specifies where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.
- (2) Where a *UCITS scheme or an EEA UCITS scheme* may invest more than 35% of its *scheme property* in *transferable securities* and money market instruments issued or guaranteed by the United Kingdom or an EEA State, one or more of its local authorities, a third

country or a public international body to which the United Kingdom or one or more *EEA States* belong, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy and indicating the particular ~~*EEA States*~~ *states*, local authorities, ~~third countries~~ or public international bodies in the *securities* of which the *scheme* intends to invest or has invested more than 35% of its *scheme property*.

- (3) Where a *UCITS scheme* ~~or *EEA UCITS scheme*~~ invests principally in *units* in *collective investment schemes*, *deposits* or *derivatives*, or replicates a stock or debt securities index in accordance with *COLL 5.2.31R* (Schemes replicating an index) ~~or equivalent national measures implementing article 53 of the *UCITS Directive*~~, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy.
- (4) Where the net asset value of a *UCITS scheme* ~~or *EEA UCITS scheme*~~ has, or is likely to have, high volatility owing to its portfolio composition or the portfolio management techniques that are or may be used, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to that characteristic.

[**Note:** articles 54(3), 70(2), 70(3) and 77 of the *UCITS Directive*]

#### Marketing communications relating to a feeder UCITS

- 4.13.3 R A *firm* must ensure that a marketing communication (other than a *key investor information document* ~~or *EEA key investor information document*~~) relating to a *feeder UCITS* contains a statement that the *feeder UCITS* permanently invests at least 85% in value of its assets in *units* of its *master UCITS*.

[**Note:** article 63(4) of the *UCITS Directive*]

## 5 Distance communications

### 5.1 The distance marketing disclosure rules

#### Application

- 5.1.-1 R (1) This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United*

*Kingdom or another EEA State.*

...

...

- 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~~ *United Kingdom*, 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~~ *the United Kingdom*.

[**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* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom* ~~or another EEA State~~.

### Information about the firm 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:

...

- (5) if it is a *professional firm*, ~~or a person regulated by the equivalent of a designated professional body in another EEA State~~:

...

- (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

...

...

- 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*]

...

## 5 Distance marketing information

### Annex

#### 1R

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

Information about the firm

...	
(2)	Where the <i>firm</i> has a representative established in the <del>consumer's EEA State of residence</del> <i>United Kingdom</i> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
...	
Information about the contract	
...	
(16)	<del>The EEA State or States whose laws are taken by the firm as a basis for the establishment of relations with the consumer prior to the conclusion of the contract. [deleted]</del>
...	

...

## 6 Information about the firm, its services and remuneration

### 6.1 Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)

...

Information about a firm and its services

6.1.4 R A *firm* must provide a *client* with the following general information, if relevant:

...

- (4) a statement of the fact that the *firm* is authorised ~~and the name of the competent authority that has authorised it~~ by the FCA or the PRA, as applicable;

...

...

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 client subject to the custody chapter or the client money chapter must provide that client with the following information:*

...

- (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~~ the United Kingdom, 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~~ the United Kingdom.

...

Compensation information

- 6.1.16 R (1) *A firm must make available to a client, who has used or intends to use the firm's services, information necessary for the identification of the compensation scheme ~~or any other investor compensation scheme of which~~ if the firm is a participant firm 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 Investor Compensation Directive~~ compensation scheme.*
- (3) ...

- (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~~ United Kingdom.

[**Note:** article 10(1) and (2) of the *Investor Compensation Directive*]

...

### 6.1ZA Information about the firm and compensation information (MiFID and insurance distribution provisions)

Application

6.1ZA. R ...  
1

- (3) Where a *firm* is carrying on *insurance distribution activities* for a *professional client* only those *rules* which ~~implement~~ implemented the requirements of the *IDD* apply.

6.1ZA. G For the purposes of *COBS* 6.1ZA.1R(3) if a *rule* ~~implements~~  
1A implemented a requirement of the *IDD*, a note (“**Note:**”) follows the *rule* indicating which provision ~~is~~ was being implemented.

...

Effect of provisions marked “~~EU~~” “UK” for third country investment firms and MiFID optional exemption firms

6.1ZA. R Provisions in this section marked “~~EU~~” “UK” apply in relation to  
3 *MiFID optional exemption business* as if they were *rules* (see *COBS* 1.2.2G).

6.1ZA. G The effect of *GEN* 2.2.22AR is that provisions in this section  
4 marked “~~EU~~” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

[**Note:** ESMA has issued guidelines under article 16(3) of the ESMA Regulation on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN). See [https://www.esma.europa.eu/sites/default/files/library/2016-574\\_en\\_guidelines\\_on\\_cross-selling\\_practices.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf)]

Information about a firm and its services: MiFID business

6.1ZA. ~~EU~~ 47(1) Investment firms shall provide clients or potential  
5 UK clients with the following general information, where relevant:

...

- (e) where the investment firm is acting through a tied agent, a statement of this fact ~~specifying the Member State in which that agent is registered~~;
- (f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with ~~Article 25(6) of Directive 2014/65/EU~~ [COBS 9A.3.2R and COBS 16A.2.1R];
- (g) where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a ~~Member State~~ the United Kingdom;

...

6.1ZA. G Reference in ~~COBS 6.1ZA.5EU~~ to “Article 25(6) of Directive 2014/65/EU” is to the requirements in ~~COBS 16A.2.1R~~. [deleted]

...

#### Information about a firm and its services: insurance distribution

6.1ZA. R A firm carrying on *insurance distribution activities* must provide  
7A a *retail client* with the following general information, if relevant:

...

- (4) if the *firm* is acting through an *appointed representative* a statement of this fact ~~specifying the EEA State in which that appointed representative is registered~~;

...

- (6) (a) a description, which may be provided in summary form, of (as applicable) the *conflicts of interest policy*, ~~SYSC 3.3.1EU~~ 3.3.1UK (applied by ~~SYSC 3.3.3R~~) or the policy required by article 4(1) of the *IDD Regulation*; and

...

...

...

Information about a firm's portfolio management service: MiFID business

6.1ZA. ~~EU~~ ...  
8 UK

Information concerning safeguarding of financial instruments belonging to clients and client money: MiFID business

6.1ZA. ~~EU~~ ...  
9 UK

49(5) The investment firm shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a ~~Member State~~ the United Kingdom and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly.

...

...

Information concerning safeguarding of client money: insurance distribution

6.1ZA. R (1) Where a *firm* doing *insurance distribution* activities holds *client money* for a *retail client* and has elected to comply with the *client money chapter*, it must provide that *client* with the information specified in:

...

(b) (if it is a *firm* doing *MiFID*, *equivalent third country* or *optional exemption business*) *COBS* ~~6.1ZA.9EU~~ 6.1ZA.9UK and *COBS* 6.1.7R(1)(e);

in relation to that *client money*.

...

...

## Costs and associated charges disclosure: MiFID

6.1ZA. 14	<del>EU</del> <u>UK</u>	50(1)	<p>For the purposes of providing information to clients on all costs and charges pursuant to <del>Article 24(4) of Directive 2014/65/EU</del> [COBS 6.1ZA.11R] (“<u>the relevant rule</u>”), investment firms shall comply with the detailed requirements in paragraphs 2 to 10.</p> <p>Without prejudice to the obligations set out in <del>Article 24(4) of Directive 2014/65/EU</del> <u>the relevant rule</u>, investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.</p> <p>Without prejudice to the obligations set out in <del>Article 24(4) of Directive 2014/65/EU</del> <u>the relevant rule</u>, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.</p> <p>...</p> <p>...</p>
		50(5)	<p>The obligation to provide in good time a full ex-ante disclosure of information about the aggregated costs and charges related to the financial instrument and to the investment or ancillary service provided shall apply to investment firms in the following situations:</p> <p>(a) ...</p> <p>(b) where the investment firm providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments, <del>in accordance with relevant Union legislation.</del></p>
		50(6)	<p>Investment firms that do not recommend or market a financial instrument to the client or are not obliged to provide the client with a KID/KIID <del>in accordance with relevant Union legislation</del> shall inform their clients</p>

about all costs and charges relating to the investment and/or ancillary service provided.

...

...

#### Timing of disclosure: MiFID business

6.1ZA. EU  
17 UK

...

6.1ZA. G  
18 The following provisions of *COBS* reproduce the information requirements contained in Articles 47 to 50 of the *MiFID Org Regulation*: *COBS* ~~6.1ZA.5EU~~ 6.1ZA.5UK, *COBS* ~~6.1ZA.8EU~~ 6.1ZA.8UK, *COBS* ~~6.1ZA.9EU~~ 6.1ZA.9UK, *COBS* ~~6.1ZA.14EU~~ 6.1ZA.14UK, and *COBS* ~~14.3A.5EU~~ 14.3A.5UK.

#### Medium of disclosure: MiFID business

6.1ZA. EU  
19 UK

...

...

#### Keeping the client up to date: MiFID business

6.1ZA. EU  
20 UK

...

...

#### Compensation information: MiFID business

6.1ZA. R  
22 (1)

*A firm must make available to a client, who has used or intends to use a firm's services, information necessary for the identification of the compensation scheme ~~or any other investor compensation scheme of which if~~ the firm is a participant firm 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 Investor Compensation Directive~~ compensation scheme.

(3) ...

- (4) The information provided for in this *rule* must be made available in a *durable medium*,<sup>2</sup> or via a website if the *website conditions* are satisfied,<sup>2</sup> in the official language or languages of the ~~EEA State~~ United Kingdom.

[**Note:** article 10(1) and (2) of the *Investor Compensation Directive*]

...

## 6.2B Describing advice services

...

### Introduction

- 6.2B.5 G This section ~~transposes~~ transposed provisions in *MiFID* on describing advice services relating to *financial instruments* and *structured deposits* for all *clients* and reproduces a number of provisions of the ~~directly applicable~~ *MiFID Org Regulation* as explained in *COBS* 1.2. The requirements apply in relation to *MiFID*, *equivalent third country* or *optional exemption business*. The requirements are extended to apply to other *investment advice* and cover other *retail investment products* when the *client* is a *retail client* in the *United Kingdom*.

...

### Interpretation of ~~EU~~ provisions marked “UK”: *MiFID* business

- 6.2B.7 R A *firm* must treat obligations in relation to *financial instruments* as extending to other *retail investment products* when complying with the provisions in this section marked “~~EU~~” “UK” in the course of *MiFID* business with a *retail client* in the *United Kingdom*.
- 6.2B.8 G References to *financial instruments* include *structured deposits* (but not other *retail investment products*) when a *firm* is complying with the provisions in this section marked “~~EU~~” “UK” in the course of *MiFID* business with a *retail client* outside the *United Kingdom* or with a *professional client*.

[**Note:** article 1(2) of the *MiFID Org Regulation*]

### Interpretation of ~~EU~~ provisions marked “UK”: non-*MiFID* business

- 6.2B.9 R In relation to business that is not *MiFID* business, a *firm* must comply with provisions in this section marked “~~EU~~” “UK” as if they were *rules* but:

- (1) ...



- (2) (for business that is not *equivalent business of a third country investment firm* or *MiFID optional exemption business*) the *firm* need not comply with the following provisions of the *MiFID Org Regulation*:
- (a) the requirement in paragraph 2 of article 52(1) of the *MiFID Org Regulation* (reproduced in *COBS ~~6.2B.32EU~~ 6.2B.32UK*) not to give undue prominence to their *independent advice* services;
  - (b) the requirement in article 52(4) of the *MiFID Org Regulation* (reproduced in *COBS ~~6.2B.36EU~~ 6.2B.36UK*) to distinguish the range of *financial instruments* issued or provided by entities not being closely linked with the *firm*; and
  - (c) the requirement in article 53(3)(c) of the *MiFID Org Regulation* (reproduced in *COBS ~~6.2B.29EU~~ 6.2B.29UK*) that a *firm* does not allow a natural person to provide both *independent advice* and *restricted advice*.

...

6.2B.1 ~~EU~~  
5 UK

...

6.2B.1 G  
6

- (1) *COBS ~~6.2B.15EU~~ 6.2B.15UK* means that a *firm* providing *independent advice* need not provide advice on all relevant products. A *firm* may market itself as, for example, an independent stockbroker that provides *independent advice* on *shares* only. A *firm* might alternatively market itself on the basis of providing *independent advice* on a particular product market such as ethical and socially responsible investments. The requirements in *COBS ~~6.2B.15EU~~ 6.2B.15UK* apply to ensure that *clients* of a *firm* that provides *independent advice* on a focused basis properly understand the nature of the advice that they will receive and that the service is appropriate.

...

#### Sufficient range

6.2B.1 G  
7

- The extent of the assessment which a *firm* is required to undertake in order to meet the requirement to assess a sufficient range of relevant products will depend on:

- (1) the nature of the *independent advice* service provided by the *firm* (general or focused) for the purposes of ~~COBS 6.2B.15EU~~ 6.2B.15UK;

...

6.2B.1 EU  
8 UK

- 53(1) Investment firms providing investment advice on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market in accordance with ~~Article 24(7)(a) of Directive 2014/65/EU~~ [COBS 6.2B.11R]. The selection process shall include the following elements:

...

6.2B.1 G  
9

- (1) ...
- (2) Notwithstanding (1), since the assessment conducted by the *firm* must be such as to ensure the *client's* investment objectives can be suitably met, a *firm* providing *independent advice* should be in a position to advise on all types of relevant product within the scope of the market (for the purposes of ~~COBS 6.2B.15EU~~ 6.2B.15UK) on which it provides advice. When the *client* is a *retail client* in the *United Kingdom*, this means being in a position to advise on all types of *financial instrument, structured deposit* and other *retail investment products*.

...

...

6.2B.2 G  
2

The fact that a *firm* is owned by, or owns, in whole or in part, the issuer or provider of relevant products does not prevent that *firm* from providing *independent advice*, provided that the *firm's* assessment of relevant products is:

...

- (3) not biased (~~COBS 6.2B.18EU~~ 6.2B.18UK).

...

#### Requirements for firms providing both independent and restricted advice

6.2B.2 EU  
9 UK

- 53(3) An investment firm offering investment advice on both an independent basis and on a non-independent basis shall comply with the following obligations:

(a) in good time before the provision of its services, the investment firm has informed its clients, in a durable medium, whether the advice will be independent or non-independent in accordance with ~~Article 24(4)(a) of Directive 2014/65/EU~~ [COBS 6.2B.33R] and the relevant implementing measures;

...

...

6.2B.3 EU  
2 UK

...

...

6.2B.3 EU  
5 UK

6.2B.3 EU  
6 UK

...

#### 6.4 Disclosure of charges, remuneration and commission

...

6.4.2 G Under the territorial application ~~rules~~ in COBS 1, the ~~rules~~ in this section apply to:

(1) ~~a UK firm's business carried on from an establishment in an EEA State other than the United Kingdom for a retail client in the United Kingdom unless, if the office from which the activity is carried on were a separate person, the activity:~~

(a) ~~would fall within the overseas persons exclusion in article 72 of the Regulated Activities Order; or~~

(b) ~~would not be regarded as carried on in the United Kingdom.~~

(2) ~~a firm's business carried on from an establishment in the United Kingdom carried on for a client in an other EEA State. [deleted]~~

Disclosure of commission (or equivalent) for packaged products

- 6.4.3 R ...
- (4) This *rule* does not apply if:
- ...
- (b) the *retail client* is not present in the ~~EEA~~ United Kingdom at the time of the transaction;  
or
- ...
- ...

...

## 7 Insurance distribution

### 7.1 Application

- 7.1.1 R This chapter applies to a *firm* carrying on *insurance distribution activities* in relation to a *life policy*, but only if the *State of the commitment* is ~~an EEA State~~ the United Kingdom.

[**Note:** articles 1, 20(1) and 23 of the *IDD*]

...

## 8A Client agreements (MiFID provisions)

### 8A.1 Client agreements (MiFID, equivalent third country or optional exemption business)

...

- 8A.1.2 R Provisions in this chapter marked “~~EU~~” “UK” apply to *MiFID optional exemption firms* as if they were *rules*.

...

Providing a client agreement: retail and professional clients

- 8A.1.4 ~~EU~~ 58 Investment firms providing any investment service or the ancillary service referred to in ~~Section B(1) of Annex I to Directive 2014/65/EC~~ paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to a client after the date of application of this Regulation shall enter into a written basic agreement with the client, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client. Investment firms providing investment advice shall comply with this obligation
- UK

only where a periodic assessment of the suitability of the financial instruments or services recommended is performed.

...

(c) a description of the main features of any services referred to in Section B(1) of Annex I to Directive 2014/65/EC paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to be provided, including where applicable the role of the firm with respect to corporate actions relating to client instruments and the terms on which securities financing transactions involving client securities will generate a return for the client.

[Note: article 58 of the *MiFID Org Regulation*]

General requirement for information to clients

8A.1.5	EU <u>UK</u>	...
8A.1.6	EU <u>UK</u>	...
8A.1.7	EU <u>UK</u>	...
...		
8A.1.1 0	EU <u>UK</u>	...

**9 Suitability (including basic advice) (other than MiFID and insurance-based investment products)**

**9.1 Application and purpose provisions**

...

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* which is not an *insurance-based investment product*, this chapter applies, but only those *rules* which ~~implement~~ implemented the requirements of the *IDD*.

9.1.6 G If a *rule* ~~implements~~ implemented a requirement of the *IDD*, a

Note (“**Note:**”) follows the *rule* indicating which provision is was being implemented. *COBS 2.1* (acting honestly fairly and professionally), *COBS 2.6* (additional insurance distribution obligations), *COBS 4* (communicating with clients), *COBS 6* (information about the firm, its services and remuneration) and *COBS 14* (product information) contain further *rules implementing which implemented the IDD*.

...

## 9.4 Suitability reports

...

9.4.3 R The obligation to provide a *suitability report* does not apply:

(1) ...

(2) if the *client* is habitually resident outside the ~~EEA~~ *United Kingdom* and the *client* is not present in the *United Kingdom* at the time of acknowledging consent to the proposal form to which the *personal recommendation* relates;

...

...

## 9A Suitability (MiFID and insurance-based investment products provisions)

### 9A.1 Application and purpose

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on certain aspects of the MiFID suitability requirements, 28 May 2018/ESMA-35-43-869 (EN). See [https://www.esma.europa.eu/system/files\\_force/library/esma35\\_43\\_869\\_fr\\_on\\_guidelines\\_on\\_suitability.pdf?download=1](https://www.esma.europa.eu/system/files_force/library/esma35_43_869_fr_on_guidelines_on_suitability.pdf?download=1).

...

Effect of provisions marked “EU” “UK” for third country investment firms and MiFID optional exemption firms

9A.1.2 R Provisions in this chapter marked “EU” “UK” and including a Note (“**Note:**”) referring to the *MiFID Org Regulation* apply in relation to *MiFID optional exemption business* as if they were *rules*.

9A.1.3 G The effect of *GEN 2.2.22AR* is that provisions in this chapter marked “EU” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

Effect of provisions marked “~~EU~~” “UK” for the firms distributing insurance-based investment products

- 9A.1.4 R Provisions in this chapter marked “~~EU~~” “UK” and including a Note (‘**Note:**’) referring to the *IDD Regulation* apply as if they were *rules* in relation to *insurance distribution activities* to which the *IDD Regulation* does not apply.

## 9A.2 Assessing suitability: the obligations

...

Assessing the extent of the information required: MiFID business

- 9A.2.4 EU ...

Assessing the extent of the information required: insurance-based investment products

- |        |               |       |   |
|--------|---------------|-------|---|
| 9A.2.4 | <del>EU</del> | 9(1)  | For the purposes of providing advice on an insurance-based investment product in accordance with <del>Article 30(1) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.1R and COBS 9A.2.16R</u> ], insurance intermediaries or insurance undertakings shall determine the extent of the information to be collected from the customer or potential customer in light of all the features of the advice to be provided to the customer or potential customer.  |
| A      | <u>UK</u>     | 9(2)  | Without prejudice to the fact that, in accordance with <del>Article 20(1) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR</u> ], any contract proposed shall be consistent with the customer’s demands and needs, insurance intermediaries or insurance undertakings shall obtain from customers or potential customers such information as is necessary for them to understand the essential facts about the customer or potential customer and to have a reasonable basis for determining that their personal recommendation to the customer or potential customer satisfies all of the following criteria:<br><br>... |
|        |               | 17(3) | Where information required for the purposes of <del>Article 30(1) or (2) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R</u> ] has already been obtained pursuant to <del>Article 20 of Directive (EU) 2016/97</del> [ <u>COBS</u>  |

9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR], insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[**Note:** articles 9(1) and (2) and 17(3) of the *IDD Regulation*]

Professional clients: MiFID business

9A.2.5	<del>EU</del> <u>UK</u>	54(3) ...  Where that investment service consists in the provision of investment advice to a professional client covered by <u>Section 1 of Annex II to Directive 2014/65/EU Part 2 of Schedule 1 to Regulation (EU) No 600/2014</u> , the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.
--------	----------------------------	--

[**Note:** article 54(3) of the *MiFID Org Regulation*]

Obtaining information about knowledge and experience: MiFID business

9A.2.6	<del>EU</del> <u>UK</u>	...
--------	----------------------------	-----

Obtaining information about knowledge and experience: insurance-based investment products

9A.2.6 A	<del>EU</del> <u>UK</u>	17(1) For the purposes of <del>Article 30(1) and (2) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R</u> ], the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:  ...
-------------	----------------------------	---

[**Note:** article 17(1) of the *IDD Regulation*]

Obtaining information about a client's financial situation: MiFID business

9A.2.7	<del>EU</del> <u>UK</u>	...
--------	----------------------------	-----

Obtaining information about a client's financial situation: insurance-based



investment products

9A.2.7 ~~EU~~ ...  
A UK

Obtaining information about a client's investment objectives: MiFID business

9A.2.8 ~~EU~~ ...  
UK

Obtaining information about a client's investment objectives: insurance-based investment products

9A.2.8 ~~EU~~ ...  
A UK

Reliability of information: MiFID business

9A.2.9 ~~EU~~ ...  
UK

Reliability of information: insurance-based investment products

9A.2.9 ~~EU~~ ...  
A UK

Maintaining adequate and up-to-date information: MiFID business

9A.2.1 ~~EU~~ ...  
0 UK

Discouraging the provision of information: MiFID business

9A.2.1 ~~EU~~ 55(2) An investment firm shall not discourage a client or  
1 UK potential client from providing information required for  
the purposes of ~~Article 25(2) and (3) of Directive~~  
~~2014/65/EU~~ [COBS 9A.2.1R and COBS 10A.2.1R].

Discouraging the provision of information: insurance-based investment products

9A.2.1 ~~EU~~ 17(2) The insurance intermediary or insurance undertaking  
1A UK shall not discourage a customer or potential customer  
from providing information required for the purposes of  
~~Article 30(1) and (2) of Directive (EU) 2016/97~~ [COBS  
9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS  
10A.2.2R].

[**Note:** article 17(2) of the *IDD Regulation*]

## Reliance on information: MiFID business

9A.2.1 ~~EU~~ ...  
2 UK

## Reliance on information: insurance-based investment products

9A.2.1 ~~EU~~ ...  
2A UK

## Insufficient information: MiFID business

9A.2.1 ~~EU~~ 54(8) Where, when providing the investment service of  
3 UK investment advice or portfolio management, an  
investment firm does not obtain the information  
required under ~~Article 25(2) of Directive 2014/65/EU~~  
[COBS 9A.2.1R], the firm shall not recommend  
investment services or financial instruments to the  
client or potential client.

[**Note:** article 54(8) of the *MiFID Org Regulation*]

## Insufficient information: insurance-based investment products

9A.2.1 ~~EU~~ 9(5) Where the insurance intermediary or insurance  
3A UK undertaking does not obtain the information required  
under ~~Article 30(1) of Directive (EU) 2016/97~~ [COBS  
9A.2.1R and COBS 9A.2.16R], the insurance  
intermediary or insurance undertaking shall not provide  
advice on insurance-based investment products to the  
customer or potential customer.

[**Note:** article 9(5) of the *IDD Regulation*]

...

## Identifying the subject of a suitability assessment: MiFID business

9A.2.1 ~~EU~~ 54(6) ...  
5 UK Where a natural person is represented by another  
natural person or where a legal person having requested  
treatment as professional client in accordance with  
~~Section 2 of Annex II to Directive 2014/65/EU Part 3~~  
of Schedule 1 to Regulation (EU) No 600/2014 is to be  
considered for the suitability assessment, the financial  
situation and investment objectives shall be those of the  
legal person or, in relation to the natural person, the  
underlying client rather than of the representative. The  
knowledge and experience shall be that of the  
representative of the natural person or the person

authorised to carry out transactions on behalf of the underlying client.

[**Note:** article 54(6) of the *MiFID Org Regulation*]

Identifying the subject of a suitability assessment: insurance-based investment products

9A.2.1 ~~EU~~  
5A UK

...

...

Switching: MiFID business

9A.2.1 ~~EU~~  
8 UK

...

Switching: insurance-based investment products

9A.2.1 ~~EU~~  
8A UK

...

Adequate policies and procedures: MiFID business

9A.2.1 ~~EU~~  
9 UK

...

Unsuitability: MiFID business

9A.2.2 ~~EU~~  
0 UK

...

Unsuitability: insurance-based investment products

9A.2.2 ~~EU~~  
0A UK

9(6) When providing advice on an insurance-based investment product in accordance with ~~Article 30(1) of Directive (EU) 2016/97~~ [*COBS 9A.2.1R and COBS 9A.2.16R*], an insurance intermediary or insurance undertaking shall not make a recommendation where none of the products are suitable for the customer or potential customer.

[**Note:** article 9(6) of the *IDD Regulation*]

...

Automated or semi-automated systems: MiFID business

9A.2.2 ~~EU~~  
3

...

UK

Automated or semi-automated systems: insurance-based investment products

9A.2.2	<del>EU</del>	12	The insurance intermediary's or insurance undertaking's responsibility to perform the suitability assessment in accordance with <del>Article 30(1) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.1R and COBS 9A.2.16R</u> ] shall not be reduced due to the fact that advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system.
4	<u>UK</u>		

[**Note:** article 12 of the *IDD Regulation*]

### 9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability

9A.3.1	<del>EU</del>	54(1)	Investment firms shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability of investment services or financial instruments in accordance with <del>Article 25(2) of Directive 2014/65/EU</del> [ <u>COBS 9A.2.1R</u> ]. When undertaking the suitability assessment, the firm shall inform clients or potential clients, clearly and simply, that the reason for assessing suitability is to enable the firm to act in the client's best interest.
	<u>UK</u>		

[**Note:** first paragraph of article 54(1) of the *MiFID Org Regulation*]

Explaining the reasons for assessing suitability: insurance-based investment products

9A.3.1	<del>EU</del>	11	Insurance intermediaries and insurance undertakings shall not create any ambiguity or confusion about their responsibilities in the process of assessing the suitability of insurance-based investment products in accordance with <del>Article 30(1) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.1R and COBS 9A.2.16R</u> ]. Insurance intermediaries and insurance undertakings shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.
A	<u>UK</u>		

[**Note:** article 11 of the *IDD Regulation*]

...

## Providing a suitability report: MiFID business

9A.3.3 ~~EU~~ ...  
UK

## Providing a suitability report: insurance-based investment products

9A.3.3 ~~EU~~ 14(1) When providing advice on the suitability of an  
 A UK insurance-based investment product in accordance with  
~~Article 30(1) of Directive (EU) 2016/97~~ [COBS  
9A.2.1R and COBS 9A.2.16R], insurance  
 intermediaries and insurance undertakings shall provide  
 a statement to the customer (suitability statement) that  
 includes the following:  
 ...  
 ...

[**Note:** article 14(1) to (3) of the *IDD Regulation*]

...

## Periodic assessments: MiFID business

9A.3.8 ~~EU~~ ...  
UK

9A.3.9 ~~EU~~ ...  
UK

## Periodic assessments: insurance-based investment products

9A.3.1 ~~EU~~ ...  
 0 UK

**9A.4 Record keeping and retention periods for suitability records**

...

## Retention of records: insurance-based investment products

9A.4.3 ~~EU~~ 19(1) Without prejudice to the application of Regulation  
UK (EU) 2016/679 of the European Parliament and of the  
 Council, insurance intermediaries and insurance  
 undertakings shall maintain records of the assessment  
 of suitability or appropriateness undertaken in  
 accordance with ~~Article 30(1) and (2) of Directive (EU)~~  
~~2016/97~~ [COBS 9A.2.1R, COBS 9A.2.16R, COBS  
10A.2.1R and COBS 10A.2.2R]. The records shall

include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.

[**Note:** article 19(1) of the *IDD Regulation*]

Record-keeping obligations for the assessment of suitability: insurance-based investment products

9A.4.4	<del>EU</del> <u>UK</u>	19(2)	In the case of an assessment of suitability undertaken in accordance with <del>Article 30(1) of Directive (EU) 2016/97</del> [ <i>COBS 9A.2.1R</i> and <i>COBS 9A.2.16R</i> ], the record shall further include the following:  ...
--------	----------------------------	-------	---

[**Note:** article 19(2) of the *IDD Regulation*]

## **10 Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)**

...

### **10.5 Assessing appropriateness: guidance**

...

Independent valuation systems

10.5.5	G	The circumstances in which valuation systems will be independent of the issuer (see <i>COBS 10.4.1R(3)(b)</i> ) include where they are overseen by a depository that is regulated as a provider of depository services in a <del>EEA State</del> <u>the United Kingdom</u> .
--------	---	--

...

## **10A Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)**

### **10A.1 Application**

[**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on complex debt instruments and structured deposits, 4 February 2016/ESMA/2015/1787 (EN). See [\[https://www.esma.europa.eu/sites/default/files/library/2015-1787-](https://www.esma.europa.eu/sites/default/files/library/2015-1787-)

~~guidelines\_on\_complex\_debt\_instruments\_and\_structured\_deposits.pdf]~~

...

Effect of provisions marked ~~EU~~ UK

- 10A.1. R The effect of *GEN 2.2.22AR* is that provisions in this chapter  
3 marked ~~EU~~ UK also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.
- 10A.1. R Provisions in this chapter marked ~~EU~~ UK and including a Note  
4 (**Note:**) referring to the *IDD Regulation* apply as if they were *rules to firms*, to whom the *IDD Regulation* does not apply, when doing *insurance distribution*.

## 10A.2 Assessing appropriateness: the obligations

...

Assessing a client's knowledge and experience: MiFID business

- 10A.2. ~~EU~~ 56(1) Investment firms, shall determine whether that client  
3 UK has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in ~~Article 25(3) of Directive 2014/65/EU~~ [*COBS 10A.1.1R*] is appropriate for a client.

...

Assessing a client's knowledge and experience: insurance-based investment product

- 10A.2. ~~EU~~ 15 Without prejudice to the fact that, in accordance with  
3A UK ~~Article 20(1) of Directive (EU) 2016/97~~ [*COBS 9A.2.3AR*, *COBS 9A.3.2R* and *COBS 9A.3.2AR*], any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall determine whether the customer has the necessary knowledge and experience in order to understand the risks involved in relation to the service or product proposed or demanded when assessing whether an insurance service or product distributed in accordance with ~~Article 30(2) of Directive (EU) 2016/97~~ [*COBS 10A.2.1R* and *COBS 10A.2.2R*] is appropriate for the customer.

[**Note:** article 15 of the *IDD Regulation*]

Information regarding a client's knowledge and experience: MiFID

business

10A.2. ~~EU~~ ...  
4 UK

Information regarding a client's knowledge and experience: insurance-based investment products

10A.2. ~~EU~~ 17(1) For the purposes of ~~Article 30(1) and (2) of Directive (EU) 2016/97~~ [COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R], the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:

...

17(3) Where information required for the purposes of ~~Article 30(1) or (2) of Directive (EU) 2016/97~~ [COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R] has already been obtained pursuant to ~~Article 20 of Directive (EU) 2016/97~~ [COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR], insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[**Note:** article 17(1) and (3) of the *IDD Regulation*]

Discouraging the provision of information

10A.2. ~~EU~~ 55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of ~~Article 25(2) and (3) of Directive 2014/65/EU~~ [COBS 9A.2.1R and COBS 10A.2.1R].  
5 UK

[**Note:** article 55(2) of the *MiFID Org Regulation*]

Discouraging the provision of information: insurance-based investment products

10A.2. ~~EU~~ 17(2) The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of ~~Article 30(1) and (2) of Directive (EU) 2016/97~~ [COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R]  
5A UK



and COBS 10A.2.2R].

[**Note:** article 17(2) of the *IDD Regulation*]

Reliance on information: MiFID business

10A.2. ~~EU~~ ...  
6 UK

Reliance on information: insurance-based investment products

10A.2. ~~EU~~ ...  
6A UK

...

#### **10A.4 Assessing appropriateness: when it need not be done due to type of investment**

10A.4. R (1) A *firm* is not required to ask its *client* to provide information  
1 or assess appropriateness if either (a) or (aa), and both (b) and (c), are met:

(a) the service:

(i) ...

(ii) relates to particular *financial instruments* (see paragraph (2)); and

(iii) ...

...

(2) The *financial instruments* referred to in (1)(a)(ii) are any of the following:

(a) shares in companies admitted to trading on:

(i) a *regulated market* or an *EU regulated market*;  
or

...

except shares that embed a derivative and *units* in a collective investment undertaking that is not a *UCITS*;  
or

(b) bonds or other forms of securitised debt admitted to trading on:

(i) a *regulated market* or an *EU regulated market*;

or

...

except those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or

...

- (3) For the purposes of this *rule*, a third country market is considered to be equivalent to a *regulated market* if it is a market in relation to which ~~the Commission~~ the Treasury has, ~~at the request of a competent authority~~, adopted an affirmative equivalence decision in accordance with the requirements and procedure in ~~article 25(4) of MiFID~~ paragraph 8 of Part 1 of Schedule 3 to MiFIR.

[**Note:** article 25(4) of *MIFID*, article 30(3) of the *IDD*]

[**Note:** ESMA has published guidelines which specify criteria for the assessment of (i) debt instruments incorporating a structure which makes it difficult for the client to understand the risk involved, and (ii) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term (see ESMA/2015/1787 (EN), 4 February 2016). ~~The guidelines can be found here: [https://www.esma.europa.eu/sites/default/files/library/2015-1787-guidelines\_on\_complex\_debt\_instruments\_and\_structured\_deposits.pdf].~~ ]

[**Note:** EIOPA has published guidelines under the *IDD* which specify criteria for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved (see EIOPA-17/651, 4 October 2017). ~~The guidelines can be found here: https://eiopa.europa.eu/Publications/Guidelines/EIOPA-17-651-IDD-guidelines-execution-only-EN.pdf.]~~

Other non-complex financial instruments

10A.4.  
2

EU  
UK

57

A financial instrument which is not explicitly specified in ~~Article 25(4)(a) of Directive 2014/65/EU~~ [COBS 10A.4.1R(2)] shall be considered as non-complex for the purposes of ~~Article 25(4)(a)(vi) of Directive 2014/65/EU~~ paragraph (2)(f) of that rule if it satisfies the following criteria:

~~(a) it does not fall within Article 4(1)(44)(c) of, or points (4) to (11) of Section C of Annex I to Directive 2014/65/EU~~ it does not fall within Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2

to the Regulated Activities Order;

...

#### Other non-complex insurance-based investment products

10A.4. ~~EU~~ 16 An insurance-based investment product shall be  
3 UK considered as non-complex for the purposes of ~~Article~~  
~~30(3)(a)(ii) of Directive (EU) 2016/97~~ [COBS  
10A.4.1R] where it satisfies all of the following  
criteria:

...

[**Note:** article 16 of the *IDD Regulation*]

...

#### 10A.7 Record keeping and retention periods for appropriateness records

...

10A.7. ~~EU~~ ...  
2 UK

#### Record keeping: insurance-based investment products

10A.7. ~~EU~~ 19(1) Without prejudice to the application of Regulation  
2A UK (EU) 2016/679 of the European Parliament and of the  
Council, insurance intermediaries and insurance  
undertakings shall maintain records of the assessment  
of suitability or appropriateness undertaken in  
accordance with ~~Article 30(1) and (2) of Directive (EU)~~  
~~2016/97~~ [COBS 9A.2.1R, COBS 9A.2.16R, COBS  
10A.2.1R and COBS 10A.2.2R]. The records shall  
include the information obtained from the customer and  
any documents agreed with the customer, including  
documents that set out the rights of the parties and the  
other terms on which the insurance intermediary or  
insurance undertaking will provide services to the  
customer. Such records shall be retained for at least the  
duration of the relationship between the insurance  
intermediary or insurance undertaking and the  
customer.

19(3) In the case of an assessment of appropriateness  
undertaken in accordance with ~~Article 30(2) of~~  
~~Directive (EU) 2016/97~~ [COBS 10A.2.1R and COBS  
10A.2.2R], the record shall further include the  
following:

...

[**Note:** article 19(1) and (3) of the *IDD Regulation*]

...

## 11 Dealing and managing

### 11.1 Application

General application

...

11.1.2 R Save as may be provided in the relevant sections, in this chapter, provisions marked “~~EU~~” “UK” apply to a *firm* which is not a *MiFID investment firm* as if they were *rules*.

...

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* and *COBS 11.7A*) to the extent necessary to be compatible with European law (see paragraph 1.1G5 of Part 3 of *COBS 1 Annex 1*). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment firm* or a *UK UCITS management company* 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* or of an *EEA UCITS management company* in relation to activities it is entitled to carry on in the *United Kingdom* under the *UCITS Directive*. [deleted]~~

...

### 11.2 Best execution for AIFMs and residual CIS operators

Application

11.2-7 G This section applies to:

- (1) a small authorised *UK AIFM* and a *residual CIS operator* in accordance with *COBS 18.5.2R*; and
- (2) ~~a *full-scope UK AIFM* and an *incoming EEA AIFM branch*~~, in accordance with *COBS 18.5A.3R*.

...

11.2-5 G In accordance with *COBS 18.5A.8R*, only the following provisions of this section apply to a *full-scope UK AIFM* ~~and an *incoming*~~

~~EEA AIFM branch:~~

...

...

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:** The Committee of European Securities Regulators (*CESR*) has issued a Question and Answer paper on best execution under the first Markets in Financial Instruments Directive (MiFID I, 2004/39/EU). This paper also incorporates the European Commission's response to *CESR*'s questions regarding the scope of the best execution obligations under MiFID I. ~~The paper can be found at:~~

[https://www.esma.europa.eu/sites/default/files/library/2015/11/07\\_320.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/07_320.pdf) See 'CESR Questions & Answers: Best Execution under MiFID', May 2007, Ref: CESR/07-320]

...

- 11.2.23 R A *full-scope UK AIFM* ~~and an incoming EEA AIFM branch~~ must make available appropriate information on its execution policy required under article 27(3) of the *AIFMD level 2 regulation* (Execution of decisions to deal on behalf of the managed AIF) and on any material changes to that policy to the investors in of each *AIF* it manages.

...

## 11.2A Best execution – MiFID provisions

- 11.2A.1 R (1) Subject to (2) to (4), the following provisions apply to a *firm's* business other than *MiFID business* as if they were *rules*:
- (a) provisions within this chapter marked "~~EU~~" "UK"; and
  - (b) ~~COBS 11 Annex 1EU~~ COBS 11 Annex 1UK (Regulatory Technical Standard (RTS 28)).
- (2) The following provisions do not apply to *MiFID optional exemption firm's* business:
- (a) the part of the first sub-paragraph of article 65(6) to the *MiFID Org Regulation* (reproduced at ~~COBS 11.2A.34EU~~ COBS

11.2A.34UK) that reads:

“In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the ~~technical standards developed under Article 27(10)(b) of Directive 2014/65/EU~~ Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 27(b) of Schedule 1 to Regulation (EU) 2014/600.”; and

(b) ~~COBS 11 Annex 1EU~~ COBS 11 Annex 1UK (Regulatory Technical Standard (RTS 28).

- (3) This chapter does not apply (but *COBS 11.2B* applies) to *UCITS management companies* when carrying on *scheme management activity*.
- (4) This chapter does not apply (but *COBS 11.2* applies) to *AIFMs* when carrying on *AIFM investment management functions* and *residual CIS operators*.

...

#### Best execution criteria

11.2A. ~~EU~~ UK ~~Article 64 of the MiFID Org Regulation sets out best execution criteria.~~

64 (1) When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in ~~Article 27(1) of Directive 2014/65/EU~~ [COBS 11.2A.2R]:

...

(2) An investment firm satisfies its obligation under ~~Article 27(1) of Directive 2014/65/EU~~ [COBS 11.2A.2R, COBS 11.2A.3G,

COBS 11.2A.9R, COBS 11.2A.12R and COBS 11.2A.15R] to take all sufficient 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.

...

### Execution policies

11.2A.  
25

EU  
UK

~~Article 66 of the *MiFID Org Regulation* sets out requirements concerning execution policies.~~

66 (1) Investment firms shall review, at least on an annual basis execution policy established pursuant to ~~Article 27(4) of Directive 2014/65/EU~~ [COBS 11.2A.20R], as well as their order execution arrangements.

...

(3) Investment firms shall provide clients with the following details on their execution policy in good time prior to the provision of the service:

(a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 59(1), to the factors referred to in ~~Article 27(1) of Directive 2014/65/EU~~ [COBS 11.2A.2R], or the process by which the firm determines the relative importance of those factors.

...

(6) Investment firms shall only receive third-party payments that comply with ~~Article 24(9) of Directive 2014/65/EU~~ [COBS 2.3A.5R, COBS 2.3A.6R and COBS 2.3A.7E] and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.

(7) Where an investment firm charges more than one participant in a transaction, in compliance with ~~Article 24(9) of Directive 2014/65/EU and its implementing measures~~ [COBS 2.3A.5R, COBS 2.3A.6R and COBS 2.3A.7E], the firm shall inform its client of the value of any monetary or non-monetary benefits received by the firm.

...

(9) Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total cost they incur. The summary shall also provide a link to the most recent execution quality data published in accordance with ~~Article 27(3) of Directive 2014/65/EU~~ [COBS

11.2C.1R, MAR 5.3.1AR(5), MAR 5A.4.2R(3) and MAR 6.3A.1R] and paragraph 4C of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 for each execution venue listed by the investment firm in its execution policy.

...

Duty of portfolio managers, receivers and transmitters to act in client's best interest

11.2A.  
34

EU  
UK

~~Article 65 of the MiFID Org Regulation sets out the duty of firms carrying out certain activities to act in the best interests of the client.~~

65 (1) Investment firms, when providing portfolio management, shall comply with the obligation under ~~Article 24(1) of Directive 2014/65/EU~~ [COBS 2.1.1R] to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

(2) Investment firms, when providing the service of reception and transmission of orders, shall comply with the obligation under ~~Article 24(1) of Directive 2014/65/EU~~ [COBS 2.1.1R] to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

...

(6) Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the ~~technical standards developed under Article 27(10)(b) of Directive 2014/65/EU~~ Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 20(b) of Schedule 3 to Regulation (EU) 600/2014.

...



(8) This Article shall not apply where the investment firm that provides the service of portfolio management or 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, ~~Article 27 of Directive 2014/65/EU~~ Articles 64 and 66 of this Regulation, technical standards made under Article 27(10) of Directive 2014/65/EC and rules in [COBS] which were relied on immediately before exit to implement Article 27 of Directive 2014/65/EU shall apply.

...

## 11.2B Best execution for UCITS management companies

...

11.2B. G     References in this chapter to a *scheme* are to a *UCITS scheme* ~~or an~~  
3            *EEA UCITS scheme*.

...

11.2B. R     (1)        A *management company* of an *ICVC* that is a *UCITS*  
26            *scheme*, ~~or an EEA UCITS scheme~~ that is structured as  
                 an investment company, must obtain the prior consent  
                 of the *ICVC* or investment company to the execution  
                 policy.

...

...

11.2B. R     ...  
36

(2)        The information must be consistent with the  
                 information published in accordance with ~~COBS 11~~  
                 ~~Annex 1EU~~ COBS 11 Annex 1UK (Regulatory  
                 technical standard 28) (which applies as *rules* in  
                 accordance with *COBS 18.5B.2R*).

...

## 11.2C Quality of execution

...

11.2C. R     ...  
2

[**Note:** article 27(3) of *MiFID* and *MiFID RTS 27*]

### 11.3 Client order handling

#### General principles

- 11.3.1 R ...
- (3) A *UCITS management company* providing *collective portfolio management services*, must establish and implement procedures and arrangements in respect of all *client orders* it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the *UCITS scheme* ~~or EEA~~ *UCITS scheme* it manages.
- ...
- 11.3.1 R (1) Subject to (2) and (3) in this chapter provisions marked “EU” “UK” apply to a *firm’s* business other than *MiFID business* as if they were *rules*.
- A (2) Provisions marked “EU” which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to all *firms* as guidance.
- (3) ~~COBS 11.3.4AEU~~ COBS 11.3.4AUK, which reproduces article 67(2) of the *MiFID Org Regulation*, does not apply to a *UCITS management company*.

...

#### Carrying out client orders

- 11.3.2 EU Article 67(1) of the *MiFID Org Regulation* requires *firms* to satisfy conditions when carrying out *client orders*.
- A UK

...

...

#### Settlement of executed orders

- 11.3.4 EU Article 67(2) of the *MiFID Org Regulation* places requirements on *firms* which are responsible for overseeing and arranging the settlement of an executed order.
- A UK

...

...

#### Use of information relating to pending client orders

- 11.3.5 EU Article 67(3) of the *MiFID Org Regulation* sets out requirements

A UK ~~concerning the use of information relating to pending *client* orders.~~  
...

...

#### Aggregation and allocation of orders

...

11.3.7 EU ~~Article 68(1) of the *MiFID Org Regulation* sets out requirements to~~  
A UK ~~be met where a *firm* carries out a *client* order or a transaction for~~  
~~own account in aggregation with another *client* order.~~  
...

11.3.7 R *A management company* must ensure that the order allocation  
B policy referred to in article 68(1)(c) of the *MiFID Org Regulation*,  
reproduced at ~~COBS 11.3.7AEU~~ COBS 11.3.7AUK, is in  
sufficiently precise terms.

...

#### Partial execution of aggregated client orders

11.3.8 EU ~~Article 68(2) of the *MiFID Org Regulation* sets out requirements~~  
A UK ~~concerning partial execution of aggregated *client* orders.~~  
...

#### Aggregation and allocation of transactions for own account

...

11.3.9 EU ~~Article 69(1) of the *MiFID Org Regulation* sets out requirements~~  
A UK ~~concerning aggregated transactions.~~  
...

...

11.3.10 EU ~~Article 69(2) of the *MiFID Org Regulation* sets out allocation~~  
A UK ~~priorities where a *firm* aggregates a *client* order in accordance with~~  
~~its allocation policy referred to in article 68(1)(c) (see *COBS*~~  
~~11.3.7AEU).~~  
...

...

11.3.11 EU ~~Article 69(3) of the *MiFID Org Regulation* introduces requirements~~  
A UK ~~for order allocation policy, referred to in article 68(1)(c) (see *COBS*~~  
~~11.3.7AEU), where transactions for own account are executed in~~  
~~combination with *client* orders.~~

...

...

Provisions which implemented the Transposition of client order handling provisions in the UCITS Implementing Directive

11.3.14 G ...

- (3) Some of these provisions ~~have been~~ were used to transpose provisions of the *UCITS implementing Directive*, as set out in the table below:

MiFID Org Regulation Provision	COBS 11.3 provision	UCITS implementing Directive transposition
article 67(1)	<del>COBS 11.3.2AEU</del> <u>COBS 11.3.2AUK</u>	article 27(1) second paragraph
article 67(3)	<del>COBS 11.3.5AEU</del> <u>COBS 11.3.5AUK</u>	article 27(2)
article 68(1)	<del>COBS 11.3.7AEU</del> <u>COBS 11.3.7AUK</u> , as modified by <del>COBS 11.3.7BR</del>	article 28(1)
article 68(2)	<del>COBS 11.3.8AEU</del> <u>COBS 11.3.8AUK</u>	article 28(2)
article 69(1)	<del>COBS 11.3.9AEU</del> <u>COBS 11.3.9AUK</u>	article 28(3)
article 69(2)	<del>COBS 11.3.10AEU</del> <u>COBS 11.3.10AUK</u>	article 28(4)

## 11.4 Client limit orders

Obligation to make unexecuted client limit orders public

- 11.4-1 R In this chapter provisions marked “EU” “UK” apply to a *firm’s* business other than *MiFID business* as if they were *rules*.

...

How client limit orders may be made public

- 11.4.3A EU ~~Article 70(1) of the *MiFID Org Regulation* provides when *client limit orders* shall be considered as being available to the public.~~  
UK
- 70 (1) A client limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue which have not been immediately executed under prevailing market condition as referred to in ~~Article 28(2) of Directive 2014/65/EU~~ [COBS 11.4.1R] shall be considered available to the public when the investment firm has submitted the order for execution to a regulated market or a MTF or the order has been published by a data reporting services provider located in one Member State a person authorised to provide data reporting services under the Data Reporting Services Regulations 2017 and can be easily executed as soon as market conditions allow.

...

Orders that are large in scale

- 11.4.5 R The obligation in *COBS 11.4.1R* to make public a *limit order* is disapplied in respect of transactions that are large in scale compared with normal market as determined under article 4 of *MiFIR*.

...

...

## 11.5A Record keeping: client orders and transactions

- 11.5A.1 R (1) Subject to (2), in this chapter provisions marked “EU” “UK” apply to a *firm’s* business other than *MiFID business* as if they were *rules*.
- (2) Provisions in this chapter which are marked “EU” “UK” do not apply to *corporate finance business* carried on by a *firm* which is not a *MiFID investment firm*.

Recording initial orders received from clients

- 11.5A.2 EU ~~Article 74 of the *MiFID Org Regulation*, together with Section 1~~

UK ~~of Annex IV to that Regulation which is reproduced at COBS 11.5A.4EU, makes provision for record keeping of initial orders from clients.~~

74 An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV [reproduced below at ~~COBS 11.5A.4EU~~ COBS 11.5A.4UK] to this Regulation to the extent they are applicable to the order or decision to deal in question.

Where the details set out in Section 1 of Annex IV to this Regulation are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, these details should be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014.

#### Record keeping in relation to transactions and order processing

11.5A.3 EU ~~Article 75 of the MiFID Org Regulation, together with Section 2 of Annex IV to that Regulation which is reproduced at COBS 11.5A.5EU, makes provision for record keeping in relation to transactions and order processing.~~

75 Investment firms shall, immediately after receiving a client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the competent authority at least the details set out in Section 2 of Annex IV [reproduced below at ~~COBS 11.5A.5EU~~ COBS 11.5A.5UK].

Where the details set out in Section 2 of Annex IV are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, they shall be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.

#### Minimum details to be recorded in relation to client orders and decisions to deal

11.5A.4 EU ~~Annex IV Section 1 of the MiFID Org Regulation makes provision for record keeping of client orders and decisions to deal.~~

...

16. The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured according to the methodology prescribed ~~under the standards on clock synchronisation under Article 50(2) Directive 2014/65/EU in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business~~

clocks or in technical standards made by the Financial Conduct Authority under paragraph 33 of Schedule 1.

Minimum details to be recorded in relation to transactions and order processing

11.5A.5 EU ~~Annex IV Section 2 of the *MiFID Org Regulation* makes provision~~  
UK ~~for record keeping of transactions and order processing.~~

...

32. The date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed ~~under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU in~~ Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

...

34. The date and exact time any message that is transmitted to and received from another investment firm in relation to events affecting an order. The exact time must be measured according to the methodology prescribed ~~under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU in~~ Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

...

**11.7 Personal account dealing**

...

11.7.3 G For the purposes of *COBS* 11.7.1R (1)(c), any other obligation of the *firm* under ~~the UK provisions which implemented *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*.*~~

...

## 11.7A Personal account dealing relating to MiFID, equivalent third country or optional exemption business

...

- 11.7A.2 R (1) Subject to (2), in this chapter provisions marked ~~“EU”~~ “UK” apply to a *firm* in relation to its equivalent third country or optional exemption business as if they were *rules*.
- (2) In this chapter, provisions ~~marked “EU”~~ which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to a *firm* in relation to its business which is the *equivalent business of a third country investment firm* or *MiFID optional exemption business* as *guidance*.

...

### Scope of personal transactions

- 11.7A.4 ~~EU~~  
UK ~~EU Article 28 of the *MiFID Org Regulation* sets out the scope of personal transactions.~~  
...

### Requirements relating to personal transactions

- 11.7A.5 ~~EU~~  
UK ~~Article 29 of the *MiFID Org Regulation* sets out detailed provision concerning personal transactions.~~  
...
- (2) Investment firms shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:
- (a) that person is prohibited from entering into it under Regulation (EU) No 596/2014;
- (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 investment firm under ~~Directive 2014/65/EU~~ UK law on markets in financial instruments.
- ...
- (6) Paragraphs 1 to 5 shall not apply to the following personal transactions:
- ...
- (b) personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of a ~~Member State~~ the United Kingdom 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.

...

11      ~~EU~~      Regulatory Technical Standard 28 (RTS 28)  
Annex 1   UK

**COMMISSION DELEGATED REGULATION (EU) ~~...~~ 2017/~~...~~ 576 of 8.6. June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution (Text with EEA relevance)**

...

HAS ADOPTED THIS REGULATION

*Article -3 Definitions*

**‘Exit Day’ has the meaning given in the European Union (Withdrawal) Act 2018.**

*Article -2 Application*

**This Regulation applies to a MiFID investment firm and a UK RIE.**

*Article -1 Interpretation*

**(1) Where a term is defined in Article 4 of Directive 2014/65/EU, the same definition applies for this Regulation except where it is defined in Article 2 Regulation 600/2014/EU, as amended by the [Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], in which case that definition applies;**

**(2) Article 2(1)(62) and (63) of Regulation 600/2014/EU applies for the purposes of this Regulation; and**

**(3) References to ‘tick size bands’ are to those in Commission Delegated Regulation 2017/588, as amended at Exit Day.**

**(4) ‘MiFID investment firm’ and ‘UK RIE’ are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority,**

**immediately after Exit Day.**

...

*Article 3 Information on the top five execution venues and quality of execution obtained*

**3. Investment firms shall publish for each class of financial instruments, a summary of the analysis and conclusions they draw from their detailed monitoring of the quality of execution venues where they executed all client orders in the previous year. The information shall include:**

...

**(h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider ~~established under Article 65 of Directive 2014/65/EU~~ authorised in accordance with the Data Reporting Services Regulations 2017.**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**11A Underwriting and placing****11A.1 Underwriting and placing**

General application

- 11A.1. R 1 (1) This chapter applies only to *MiFID* or *equivalent third country business*.
- (2) Subject to (3), in this chapter provisions marked “EU” “UK” apply to the *equivalent business of a third country investment* as if they were *rules*.
- (3) In this chapter, provisions marked “EU” which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to the *equivalent business of a third country investment firm as guidance*.

Requirements to provide specific information to issuer clients

- 11A.1. EU **Article 38(1) of the *MiFID Org Regulation* sets out requirements for**

- 2 UK  ~~firms to provide specified information to issuer *clients* before accepting a mandate to manage an offering.~~

38 (1) Investment firms which provide advice on corporate finance strategy, as set out in ~~Section B(3) of Annex I Paragraph 3 of Part 3A of Schedule 2 to the Regulated Activities Order~~, and provide the service of underwriting or placing of financial instruments, shall, before accepting a mandate to manage the offering, have arrangements in place to inform the issuer client of the following:

...

Requirements to identify underwriting and placing operations and to ensure that adequate controls are in place to manage conflicts of interest

- 11A.1. EU  ~~Article 38(2) and (3) of the *MiFID Org Regulation* sets out requirements to identify all underwriting and placing operations of a firm and to ensure that adequate controls are in place to manage any potential conflicts of interest.~~

...

Additional requirements in relation to pricings of offerings in relation to the issuance of financial instruments

- 11A.1. EU  ~~Article 39(1) of the *MiFID Org Regulation* sets out additional requirements in relation to pricing of offerings in relation to issuance of *financial instruments*.~~

...

...

Further requirements concerning the provision of information

- 11A.1. EU  ~~Article 39(2) of the *MiFID Org Regulation* sets out additional requirements concerning the provision of information.~~

...

Further requirements in relation to placing

- 11A.1. EU  ~~Article 40 of the *MiFID Org Regulation* sets out additional requirements in relation to placing.~~

...

(3) Investment firms shall not accept any third-party payments or benefits unless such payments or benefits comply with ~~the inducements requirements rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 which were relied on before exit day to implement requirements laid down in Article 24 of Directive 2014/65/EU~~. In particular, the following practices shall be considered not compliant with those requirements and shall therefore be considered not acceptable:

...

Further requirements in relation to advice, distribution and self-placement11A.1.  
7EU  
UK~~Article 41 of the *MiFID Org Regulation* sets out additional requirements in relation to advice, distribution and self placement.~~

41 (1) Investment firms shall have in place systems, controls and procedures to identify and manage the conflicts of interest that arise when providing investment service to an investment client to participate in a new issue, where the investment firm receives commissions, fees or any monetary or non-monetary benefits in relation to arranging the issuance. Any commissions, fees or monetary or non-monetary benefits shall comply with the requirements in ~~Article 24(7), 24(8) and 24(9) of Directive 2014/65/EU~~ [COBS 2.3A.5R to COBS 2.3A.7E, COBS 2.3A.15R, COBS 2.3A.16R, COBS 2.3A.19R and COBS 6.2B.11R] and be documented in the investment firm's conflicts of interest policies and reflected in the firm's inducements arrangements.

...

(4) Investment firms which offer financial instruments issued that are by themselves or other group entities to their clients and that are included in the calculation of prudential requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>1</sup>, the law of the United Kingdom or any part of the United Kingdom ("UK law") which was relied on before exit day to implement Directive 2013/36/EU of the European Parliament and of the Council<sup>2</sup> or Directive 2014/59/EU of the European Parliament and of the Council<sup>3</sup>, shall provide those clients with additional information explaining the differences between the financial instrument and bank deposits in terms of yield, risk, liquidity and any protection provided in accordance with UK law which was relied on before exit day to implement Directive 2014/49/EU of the European Parliament and of the Council.

...

Further requirements in relation to lending on provision of credit in the context of underwriting or placement11A.1.  
8EU  
UK~~Article 42 of the *MiFID Org Regulation* sets out additional requirements in relation to lending on provision of credit in the context of underwriting or placement.~~

...

Record keeping requirements in relation to underwriting or placing11A.1.  
9EU  
UK~~Article 43 of the *MiFID Org Regulation* sets out record keeping requirements in relation to underwriting or placing.~~

...

## 12 Investment research

### 12.1 Purpose and application

...

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 Annex 1). This means that COBS 12.2 also applies to *passport*ed activities carried on by a UK MiFID investment firm from a branch in another EEA state, but does not apply to the United Kingdom branch of an EEA MiFID investment firm in relation to its MiFID business. [deleted]~~

### 12.2 Investment research and non-independent research

...

- 12.2.15 R Where this section applies to a *firm* in relation to business other than its *MiFID business*, provisions in this ~~section marked “EU”~~ section marked “UK” shall apply as if they were *rules*, other than those that copy out recitals, which shall apply as if they were *guidance*.

...

Investment research and non-independent research

- 12.2.17 ~~EU~~ UK ~~Article 36(1) of the MiFID Org Regulation defines investment research.~~
- 36(1) For the purposes of Article 37 investment research shall be research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:
- ...
- (b) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of ~~Directive 2014/65/EU~~ UK law on markets in financial instruments.

Non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation

- 12.2.18 EU ~~Article 36(2) of the MiFID Org Regulation deals with the treatment~~

UK ~~of non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation (see COBS 12.4) and in contrast to investment research as defined in article 36(1) (see COBS 12.2.17EU).~~

36(2) A recommendation of the type covered by point (35) of Article 3(1) of Regulation (EU) 596/2014 that does not meet the conditions set out in paragraph 1 shall be treated as a marketing communication for the purposes of ~~Directive 2014/65/EU~~ UK law on markets in financial instruments and investment firms that produce or disseminate that recommendation shall ensure that it is clearly identified as such.

...

#### Conflicts of interest

12.2.19 EU ~~Article 37(1) of the MiFID Org Regulation requires firms to apply the conflicts requirements set out in article 34(3) of the MiFID Org Regulation to persons involved in the production of investment research and non-independent research. Recitals 51, 52 and 55 to the MiFID Org Regulation relate to the required measures and arrangements.~~

...

12.2.20 G ...

(2) ~~COBS 12.2.19EU~~ 12.2.19UK relates to the management of conflicts of interest in relation to *investment research*.

...

#### Measures and arrangements required for investment research

12.2.21 EU ~~Article 37(2) of the MiFID Org Regulation requires firms to put arrangements in place around the production of investment research to ensure the conditions set out in that article are satisfied. Recitals 53, 54 and 56 relate to those arrangements and the article 37(2) conditions.~~

...

Recital 54

Fees, commissions, monetary or non-monetary benefits received by the firm providing investment research from any third party should only be acceptable when they are provided in accordance with requirements specified in Article 24(9) of Directive 2014/65/EU and Article 13 of Commission Delegated Directive (EU) ~~2017 / 593~~ 2017 / 593 ~~[to be inserted before adoption] of XXX supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to~~

~~the provision or reception of fees, commissions or any monetary or non-monetary benefits.~~

...

#### Exemptions from article 37(1) of the MiFID Org Regulation

12.2.22 ~~EU~~ ~~Article 37(3) of the *MiFID Org Regulation* provides for exemptions from article 37(1) of the *MiFID Org Regulation* (COBS 12.2.19EU).~~  
~~UK~~

37(3) Investment firms which disseminate investment research produced by another person to the public or to clients shall be exempt from complying with paragraph 1 if the following criteria are met:

...

...

## **12.4 Investment recommendations**

...

12.4.1 ~~EU~~ [article 20 of the *Market Abuse Regulation*]  
 A ~~UK~~

...

12.4.4 ~~EU~~ [article 20(1) of the *Market Abuse Regulation*]  
 A ~~UK~~

...

## **13 Preparing product information**

### **13.1 The obligation to prepare product information**

...

PRIIPs

13.1.1 G (1) The *PRIIPs Regulation* requires the manufacturer of a *PRIIP* to draw up a *key information document* in accordance with the *PRIIPs Regulation* before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*) in the United Kingdom.  
 A

[**Note:** article 5 of the *PRIIPs Regulation*]

(2) Since the *PRIIPs Regulation* imposes ~~directly applicable~~ requirements in relation to the preparation of product information for *PRIIPs*, the rules in *COBS* 13.1 to *COBS* 13.4

do not apply to a *firm* in relation to the manufacture of a *PRIIP* (except where applicable to *Solvency II Directive information*). *COBS* 13.5 and *COBS* 13.6 continue to apply where relevant.

#### Application of the PRIIPs regulation to funds

- 13.1.1B G (1) A *UCITS management company* is exempt from the *PRIIPs Regulation* until 31 December 2019 (see article 32(1) of the *PRIIPs Regulation*). These *firms* should continue to publish a *key investor information document* until that date (see *COLL* 4.7).
- (2) (a) A manager of a *fund* offered to retail investors in the United Kingdom, other than a *UCITS*, is able to benefit from this exemption where ~~a Member State~~ the United Kingdom applies rules on the format and content of the *key investor information document* ~~in which~~ implemented articles 78 to 81 of the *UCITS Directive* to that *fund* (see article 32(2) of the *PRIIPs Regulation*).
- ...
- (c) An *authorised fund manager* of a *non-UCITS retail scheme* offered to *retail clients* in the United Kingdom may, until 31 December 2019, draw up either:
- ...

...

#### 13.4 Contents of a key features illustration

...

- 13.4.5 G Although there may be no obligation to include a *projection* in a *key features illustration*, where a *firm* chooses to include one, the *projection* should:
- ...
- (2) Where the *projection* relates to a *financial instrument*, the *firm* should comply with either:
- (a) the requirements in article 44(6) of the *MiFID Org Regulation* (see ~~*COBS* 4.5A.14EU~~ *COBS* 4.5A.14UK) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*); or
- ...



### 13.5 Preparing product information: other projections

...

13.5.2B G Where a *firm* communicates a *projection* for a *packaged product* that is a *financial instrument*, the following future performance requirements are likely to apply:

- (1) article 44(6) of the *MiFID Org Regulation* (see *COBS 4.5A.14EU 4.5A.14UK*) where the *firm* is carrying on *MiFID*, *equivalent third country* or *optional exemption business*; or

...

Exceptions to the projection rules: projections for more than one product

13.5.3 R A *firm* that communicates a *projection* of benefits for a *packaged product* which is not a *financial instrument*, as part of a combined *projection* where other benefits being projected include those for a *financial instrument* or *structured deposit*, is not required to comply with the projection rules in *COBS 13.4*, *COBS 13.5* and *COBS 13 Annex 2* to the extent that the combined *projection* complies with the future performance requirements in either:

- (1) article 44(6) of the *MiFID Org Regulation* (see *COBS 4.5A.14EU 4.5A.14UK*) where the *firm* is carrying on *MiFID*, *equivalent third country* or *optional exemption business*; or

...

13.5.4 G The general requirement that communications be fair, clear and not misleading will nevertheless mean that a *firm* that elects to comply with the future performance rule in *COBS 4.6.7R*, or, if applicable, the requirement in article 44(6) of the *MiFID Org Regulation* (see *COBS 4.5A.14EU 4.5A.14UK*), will need to explain how the combined *projection* differs from other information that has been or could be provided to the client, including a *projection* provided under the *projection rules* in *COBS 13.4*, *COBS 13.5* and *COBS 13 Annex 2*. In particular, the *firm* should identify where a *projection* in real terms is required under *COBS 13*.

...

## 13 Annex 1 Solvency II Directive Information

This annex belongs to *COBS 13.1.2R* (The Solvency II Directive information)

Information about the firm

...

- (2) The name of the ~~EEA State~~ state in which the head office and, where appropriate, agency or branch concluding the contract is situated;

...

...

## 14 Providing product information to clients

...

### 14.2 Providing product information to clients

Providing information about PRIIPs

- 14.2.-1 G (1) The *PRIIPs Regulation* requires a *person* who advises on, or sells, a *PRIIP* to provide a retail investor (as defined in the *PRIIPs Regulation*) in the United Kingdom with the *key information document* for that *PRIIP*.

[**Note:** article 13 of the *PRIIPs Regulation*]

- (2) Since the *PRIIPs Regulation* imposes ~~directly applicable~~ requirements in relation to the provision of information about *PRIIPs*, this chapter does not apply to a *firm* when it is advising on, or selling, a *PRIIP* (except where applicable to *Solvency II Directive information*).

...

The provision rules for products other than PRIIPs

- 14.2.1 R A *firm* that sells:

...

- (5A) a *unit* in a *KII-compliant NURS* must provide the following to a *retail client*:

...

- (b) if that *client* is present in the ~~EEA~~ United Kingdom, enough information for the *client* to be able to make an informed decision about whether to hold the *units* in a *wrapper* (if the *units* will, or may, be held in that way);

...

- (7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which

is a *recognised scheme*, to a *client*, must:

...

- (b) where the *client* is a *retail client*, provide separately (unless already provided) the information required by COBS 13.3.1R (2) (General requirements) and, if that *client* is present in the *EEA United Kingdom*, the information required by (5A)(b).

...

...

Exception to the provision rules: key features documents and key investor information documents

14.2.5 R A *firm* is not required to provide:

...

- (2) ~~a key features document or key features illustration, if another person is required to provide the distance marketing information by the rules of another EEA State; [deleted]~~
- (3) ~~the Solvency II Directive information, if another person is required to provide that information by the rules of another EEA State. [deleted]~~

...

...

Exception to the provision rules: key features documents and key features illustrations

14.2.7 R A *firm* is not required to provide a *key features document* or a *key features illustration* for:

- (2) a *life policy* if:
- (a) ~~the *firm* is operating from an establishment in another EEA State and the sale is by distance contract; or [deleted]~~

...

...

...

Exception to the provision rules: key features documents, key features illustrations, key investor information documents and NURS-KII

documents

14.2.9 R A *firm* is not required to provide a *key features document* or a *key features illustration* if:

- (1) the *client* is habitually resident outside the ~~EEA~~ United Kingdom and not present in the ~~EEA~~ United Kingdom when the relevant application is signed; or

...

...

Providing additional information to the client

14.2.18 G ...

- (2) When a *firm* provides additional information it should:

...

- (b) consider whether any other *rules* or requirements in any ~~directly applicable EU~~ EU-derived regulations apply to the communication of that additional information. For example, for marketing communications relating to a *UCITS scheme* ~~or EEA UCITS scheme~~ see *COBS* 4.13.2R; and

...

### 14.3 Information about designated investments (non-MiFID provisions)

...

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~~ Part VI of the Act, that *firm* must inform the *retail client* where that prospectus is made available to the public.

...

Information about UCITS schemes

14.3.11 R If a *firm* provides a *client* with a *key investor information document* or *EEA key investor information document* that meets all of the requirements of articles 78 and 79 of the UCITS Directive (see COLL 4.7 (Key investor information and marketing communications)) and the *KII Regulation* applying in relation to that document, it will have provided appropriate information for the purpose of the requirement to disclose information on:

- (1) *designated investments* and investment strategies (*COBS 2.2.1R(1)(b)*); and
- (2) costs and associated charges (*COBS 2.2.1R(1)(d)* and *COBS 6.1.9R*);

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

...

**14.3A Information about financial instruments (MiFID provisions)**

...

Effect of provisions marked “~~EU~~” “UK” for third country investment firms and MiFID optional exemption firms

14.3A. R Provisions in this section marked “~~EU~~” “UK” apply in relation to  
2 *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).

14.3A. G The effect of *GEN 2.2.22AR* is that provisions in this section  
2A marked “~~EU~~” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

...

14.3A. ~~EU~~  
5 UK

...  
48(3) Where an investment firm provides a retail client or potential retail client with information about a financial instrument 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 law of the United Kingdom which was relied on immediately before exit day to implement Directive 2003/71/EC, as that law is amended from time to time, that firm shall in good time before the provision of investment services or ancillary services to clients or potential clients inform the client or potential client where that prospectus is made available to the public.  
...

...

Timing of disclosure

14.3A. ~~EU~~  
7 UK

14.3A. G The provisions in *COBS* that reproduce the information requirements  
 8 contained in articles 47 to 50 of the *MiFID Org Regulation* are:  
*COBS* 6.1ZA.5EU 6.1ZA.5UK, *COBS* 6.1ZA.8EU 6.1ZA.8UK,  
*COBS* 6.1ZA.9EU 6.1ZA.9UK, *COBS* 6.1ZA.14EU 6.1ZA.14UK  
 and *COBS* 14.3A.5EU 14.3A.5UK.

Medium of disclosure

14.3A. EU ...  
 9 UK

Keeping the client up-to-date

14.3A. EU ...  
 10 UK

Information provided in accordance with the ~~UCITS Directive and the  
 PRIIPs Regulation~~ relation to units in collective investment undertakings or  
 PRIIPs

14.3A. EU ...  
 11 UK

...

**14 Lifetime ISA information**  
**Annex**  
**1**

This Annex belongs to *COBS* 13.3.1R(3) and *COBS* 14.2.1R(4A).

Information which comprises the following:

...

4 Projections

4.1 R Where a *firm* chooses to provide a *projection*, including a *personal  
 projection*, in relation to investing in a *lifetime ISA* in addition to the  
 information in *COBS* 14 Annex 1 3 (Example outcome of retirement  
 saving by a retail client in a *lifetime ISA*), a *firm* must ensure that:

...

(2) where a *firm* that communicates a *projection* for a *lifetime ISA*  
 in relation to its *MiFID* or *equivalent third country business*,  
 the *projection* complies with the future performance  
 requirements in article 44(6) of the *MiFID Org Regulation*  
 (see *COBS* 4.5A.14EU 4.5A.14UK); and

...

## 15 Cancellation

...

## 15 Exemptions from the right to cancel

### Annex

#### 1

Exemptions for life policies and pension contracts (non-distance)			
1.1	R	There is no right to cancel a non- <i>distance contract</i> that is a <i>life policy</i> or a <i>pension contract</i> :	
		...	
		(5)	if the <i>consumer</i> , at the time he signs the application, is <i>habitually resident</i> :
		(a)	<del>in an EEA State other than the UK (but that state's rules may apply); or</del>
		(b)	outside the <del>EEA</del> <u>UK</u> and is not present in the <u>UK</u> .
...			

## 16 Reporting information to clients (non-MiFID provisions)

...

### 16.2 Occasional reporting

Execution of orders other than when managing investments

#### 16.2.1 R ...

- (6) In relation to subscription and *redemption* orders for *units* in a *UCITS scheme* ~~or EEA UCITS scheme~~ executed by an *authorised fund manager*, paragraphs (1), (3) and (5) of this *rule* apply as if references to:
- (a) a *client* and to a *retail client* were references to a *Unitholder* in the *scheme*; and
  - (b) *trade confirmation information* in paragraphs (1)(b) and (5)(b) were to the information in paragraph (7).
- (7) The notice referred to in paragraph (1)(b) must, where applicable, for subscription and *redemption* orders for *units* in a *UCITS scheme* ~~or EEA UCITS scheme~~ executed by an *authorised fund manager*, include the following information:

...

- (e) the identification of the *UCITS scheme* ~~or *EEA UCITS scheme*~~;

...

...

...

**16.6 Communication to clients – life insurance, long-term care insurance and income withdrawals**

Disclosure for life insurance contracts: information to be provided during the term of the contract

- 16.6.1 R (1) 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*:
  - (a) ~~in an *EEA State* other than the *United Kingdom*; or~~
  - (b) outside the ~~*EEA*~~ *United Kingdom* and he was not present in the *United Kingdom*.

...

...

**16A Reporting information to clients (MiFID and insurance-based investment products provisions)**

**16A.1 Application**

...

Effect of provisions marked “~~EU~~” “UK” for third country investment firms and MiFID optional exemption firms

- 16A.1.2 R Provisions in this chapter marked “~~EU~~” “UK” and including a Note (‘**Note:**’) referring to the *MiFID Org Regulation* apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).
- 16A.1.2A G The effect of *GEN 2.2.22AR* is that provisions in this chapter marked “~~EU~~” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

Effect of provisions marked “~~EU~~” “UK” for firms distributing insurance-based investment products



- 16A.1. R Provisions in this chapter marked “~~EU~~” “UK” and including a Note  
3 (**Note:**) referring to the *IDD Regulation* apply as if they were *rules to firms* to whom the *IDD Regulation* does not apply, when doing *insurance distribution*.

...

### 16A.3 Occasional reporting: MiFID business

Execution of orders other than when undertaking portfolio management

- 16A.3. ~~EU~~ ...  
1 UK

...

Reporting obligations in respect of eligible counterparties

- 16A.3. ~~EU~~ ...  
5 UK

### 16A.4 Periodic reporting

Provision by a firm and contents: MiFID business

- 16A.4. ~~EU~~ ...  
1 UK

60(3) ...

The exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by ~~Article 4(1)(44)(c) of, or any of points 4 to 11 of Section C in Annex I to Directive 2014/65/EU~~ Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order.

...

- 16A.4. G In accordance with *COBS 2.4.9R*, a *firm* may dispatch a *periodic statement* (as required by article 60(1) of the *MiFID Org Regulation*, see ~~*COBS 16A.4.1EU*~~ *16A.4.1UK*) to an agent, other than the *firm* or an associate of the *firm*, nominated by the *client* in writing.

Provision by a firm and contents: insurance-based investment products

- 16A.4. ~~EU~~ 18(1) Without prejudice to ~~Article 185 of Directive 2009/138/EC of the European Parliament and of the Council~~ [*COBS*  
2A UK *13.1.2R, COBS 13.3.2R, COBS 14.2.11R, COBS 14.2.5R, COBS 14.2.7R, COBS 16.6.3R, COBS 16.6.3AR and COBS*

20.4.7R, and COBS 13 Annexes 1 and 2], the insurance intermediary or insurance undertaking shall provide the customer with a periodic report, on a durable medium, of the services provided to and transactions undertaken on behalf of the customer.

...

Additional reporting obligations for portfolio management or contingent liability transactions

16A.4. EU ...  
3 UK

...

### 16A.5 Statements of client financial instruments or client funds

16A.5. EU 63(1) Investment firms that hold client financial instruments  
1 UK or client funds shall send at least on a quarterly basis, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement. Upon client request, firms shall provide such statement more frequently at a commercial cost.

The first subparagraph shall not apply to a credit institution ~~authorised under Directive 2000/12/EC of the European Parliament and of the Council that is a CRR firm as defined in Article 4(1)(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms~~ in respect of deposits within the meaning of ~~that Directive Article 2(1)(23A) of Regulation (EU) No 600/2014~~ held by that institution.

63(2) The statement of client assets referred to in paragraph 1 shall include the following information:

...

(d) a clear indication of the assets or funds which are subject to the rules of ~~Directive 2014/65/EU and its implementing measures~~ the UK law on markets in financial instruments and those that are not, such as those that are subject to Title Transfer Collateral Agreement;

...

...

...

**18 Specialist Regimes**

...

**18.5 Residual CIS operators and small authorised UK AIFMs**

...

Distance marketing

18.5.5 G *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a consumer in the *UK* ~~or another EEA State~~, *COBS* 5.1 applies specific requirements for that activity.

...

Exceptions from the requirement to provide a periodic statement

18.5.13 R ...

(2) ~~For a firm acting as an outgoing ECA provider, the exemption for retail client investors ordinarily resident outside the United Kingdom applies only to an investor in the fund who is a retail client ordinarily resident outside the EEA. [deleted]~~

...

18.5.15 E Table: Periodic statements

This table belongs to *COBS* 18.5.12E

Periodic statements				
...				
Adequate information	(2)	(a)	A periodic statement should contain:	
			...	
			(ii)	such information as an investor who is a <i>retail client</i> ordinarily resident outside the <i>United Kingdom</i> , or a <i>professional client</i> , has on his own initiative agreed with the <i>firm</i> as adequate.

		(b)	For a <i>firm</i> acting as an <i>outgoing ECA provider</i> , the words ‘ <i>United Kingdom</i> ’ is replaced by ‘ <i>EEA</i> ’ <del>[deleted]</del>
--	--	-----	--

...

**18.5A Full-scope UK AIFMs and incoming EEA AIFM branches**

Application

18.5A.1 R Subject to COBS 18.5A.2R, this section applies to a *firm* which is:

- (1) a *full-scope UK AIFM* of:
  - (a) a *UK AIF*; and
  - (b) ~~an EEA AIF; and [deleted]~~
  - (c) a ~~non-EEA AIF~~ *non-UK AIF*; ~~or~~
- (2) ~~an incoming EEA AIFM branch. [deleted]~~

18.5A.2 R The adequate information provisions in COBS 18.5A.11R do not apply to a *full-scope UK AIFM* of:

- (1) ~~a UK ELTIF or an EEA ELTIF~~ *an LTIF*; or
- (2) an *unauthorised AIF* which is not a *collective investment scheme*.

Application or modification of general COBS rules

18.5A.3 R A *firm* when it is carrying on *AIFM investment management functions*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Full-scope UK AIFM	Incoming EEA AIFM branch

1 (Application)	Applies	Applies
2.1.4R (AIFMs best interest rule)	Applies	Applies
2.3B (Inducements and research)	Applies, as modified by <i>COBS</i> 18 Annex 1	<del>Applies, as modified by <i>COBS</i> 18 Annex 1</del>
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies	Applies
5.2 (E-commerce)	Applies	Applies
11.2 (Best execution for AIFMs and residual CIS operators)	Applies as modified by <i>COBS</i> 18.5A.8R	<del>Applies as modified by <i>COBS</i> 18.5A.8R</del>
18.5A ( <i>Full-scope AIFMs and incoming EEA AIFM branches</i> )	Applies as modified by <i>COBS</i> 18.5A.2R	Applies
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies (subject to <i>COBS</i> 18.5A.7R)	<del>Applies (subject to <i>COBS</i> 18.5A.7R)</del>

...

## Distance marketing

- 18.5A.1 R *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a consumer in the *UK* or another ~~*EEA State*~~, *COBS* 5.1 applies specific requirements for that activity.

...

**18.5B UCITS management companies**

...

## Distance marketing

- 18.5B.7 G *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a consumer in the *UK* or another ~~EEA State~~, *COBS* 5.1 applies specific requirements for that activity.

...

**18.8A OPS firms**

...

## Interpretation and general modifications

- 18.8A.2 R Where a *COBS rule* specified in this section applies to an *OPS firm*, the following modifications apply:

...

- (3) subject to the modifications in *COBS* 18.8A.6R, *COBS* 18.8A.15R(4) and *COBS* 18.8A.16R(4), *COBS* 1.2.3R (References in *COBS* to the MiFID Org Regulation) applies where a *COBS* provision marked “~~EU~~” “UK” applies to an *OPS firm*.

...

- 18.8A.1 R The provisions in *COBS* 11.2A (Best execution – MiFID  
4 provisions) marked “~~EU~~” “UK” and *COBS* 11 Annex 1 ~~EU~~UK (Regulatory Technical Standard 28) apply to an *OPS firm* to which (1) applies as if they were *rules*.

## Modification of best execution rules

- 18.8A.1 R ...  
5

- (2) The requirement in *COBS* ~~11.2A.34EU~~ 11.2A.34UK (see article 65(6) of the *MiFID Org Regulation*) to make public for each class of *financial instruments*:

...

...

- (4) In *COBS* 11.2A, a reference to:

...

- (b) “*portfolio management*” in *COBS* ~~11.2A.34EU~~

11.2A.34UK (see article 65(1) of the *MiFID Org Regulation*) is to be construed as a reference to *OPS activity* falling within the scope of *COBS 18.8A.13R* and which involves the *OPS firm* placing orders with other entities for execution that result from decisions by the *OPS firm* to deal in *financial instruments* on behalf of its *client*; and

...

Client order handling

18.8A.1 R ...  
6

- (2) The provisions in *COBS 11.3* (Client order handling) marked “~~EU~~” “UK” apply to an *OPS firm* as if they were *rules*.

...

...

**18.9 ICVCs**

...

18.9.2 G *Firms* should note that the *operator* of an *ICVC* when it is undertaking *scheme management activity* will be subject to:

- (1) ...
- (2) *COBS 18.5A.3R* if the *operator* is a *full-scope UK AIFM* ~~or an incoming EEA AIFM branch~~; or
- (3) ...

**18.10 ~~UCITS qualifiers, AIFM qualifiers and service~~ Service companies**

18.10.1 R The *COBS* provisions in the table apply to a ~~*UCITS qualifier*~~ and a *service company*:

...

18.10.2 R ~~*COBS 4* and *COBS 12.4* apply to an *AIFM qualifier*.~~ [deleted]

**18.11 Authorised professional firms**

...

18.11.2 *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:

...

- (3) the *rules* in the following parts of *COBS* which ~~implement~~ implemented the *IDD* apply in relation to *insurance distribution activities*:

...

but only if the *designated professional body* of the *firm* does not have rules approved by the *FCA* under section 332(5) of the *Act* that ~~implement~~ implemented articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the *IDD* and that apply to the *firm*;

...

18.11.2 G For *COBS* 18.11.2R(3) if a *rule* ~~implements~~ implemented a requirement of the *IDD*, a note (“**Note:**”) follows the *rule* indicating which provision ~~is~~ was being implemented.

...

## **18**      **Research and inducements for collective portfolio managers** **Annex 1**

1            Application

1.1        G      This section applies to:

...

- (2) a *full-scope UK AIFM* ~~and an incoming EEA AIFM branch~~, in accordance with *COBS* 18.5A.3R;

...

...

2.4        G      A *firm* may inform investors in the *fund* about the fees, commissions or monetary benefits transferred to them through:

...

- (2) the annual reports provided on request to investors, for a *small authorised UK AIFM* in relation to an *authorised AIF*, a *full-scope UK AIFM*, ~~an incoming EEA AIFM branch~~ or a *UCITS management company*.

...



4.3 R Where *COBS 2.3B* applies to a *firm*, the following modifications apply:

...

(5) in *COBS 2.3B.24G*, the reference to *COBS 11.2A* is to be construed as a reference to:

(a) *COBS 11.2* for *small authorised UK AIFMs, residual CIS operators, and full-scope UK AIFMs and incoming EEA AIFM branches*; and

...

...

## 20 With-profits

### 20.1 Application

...

20.1.3 R For an *EEA insurer*:

(1) (a) ~~the rules and guidance on the with profits fund (*COBS 20.1A*), 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*), and the governance provisions in *COBS 20.5*. apply only in so far as responsibility for the matter in question has not been reserved to the firm's Home State regulator by an EU instrument;~~

notwithstanding the above:

(b) ~~*COBS 20.2.26AR* (financial penalties and the with profits fund) applies;~~

(c) ~~the rules and guidance on the notification of policyholders where there is a change in the percentage allocation of distributions (*COBS 20.2.19AR* to *COBS 20.2.19CG*) apply but only to the extent that the UK is the State of the commitment;~~

(2) ~~*COBS 20.3* (Principles and Practices of Financial Management) does not apply;~~

(3) ~~the rule on providing information to with profits policyholders where the United Kingdom is the State of the commitment (*COBS 20.4.4R*) applies, but the rest of *COBS 20.4* (Communications with with profits policyholders)~~

does not; and

- (4) ~~[deleted]~~
- (5) ~~references in COBS 20 to a with-profits fund or to terms derived from the Solvency II Directive requiring transposition in the Home State, apply as if they were references to the relevant fund or terms established in accordance with the requirements of the Home State. [deleted]~~

...

## 20.4 Communications with with-profits policyholders

...

### Requirements on EEA insurers

- 20.4.4 R ~~In relation to any with-profits policyholder where the state of the commitment is the United Kingdom, an EEA insurer must:~~
- (1) ~~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 information required to be provided in the PPFM produced by a firm subject to COBS 20.3; 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. [deleted]~~

...

## 21 Permitted Links

### 21.1 Application

- 21.1.1 R ~~The rules in this section apply on an ongoing basis to insurers who effect linked long-term contracts, that are effected by:~~
- (1) ~~insurers other than EEA insurers; and~~

(2) ~~EEA insurers in the United Kingdom.~~

...

## 21.2 Rules for firms engaged in linked long-term insurance business

...

21.2.1B R ~~Insurers other than EEA insurers~~ effecting *linked long-term contracts* of insurance are obliged to comply with the requirements on investments in the PRA Rulebook Solvency II Firms Investments.

...

## 21.3 Further rules for firms engaged in linked long-term insurance business

...

21.3.8 G A *firm* should assess the liquidity of a *money-market instrument* in accordance with *CESR's UCITS eligible assets guidelines*, with respect to UK provisions which implemented article 4(1) of the *UCITS eligible assets Directive*.

...

### Stock lending: requirements

21.3.11 R (1) The *stock lending* arrangement is of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), and:

(a) all the terms of the agreement under which *securities* are to be reacquired by the *firm* for the account of the unit-linked fund are in a form which is acceptable to the *firm* and in accordance with good market practice;

(b) the counterparty is:

(i) an *authorised person*; or

(ii) a *person* authorised by a Home State regulator in an EEA State; or

...

...

...

## 22 Restrictions on the distribution of certain regulatory capital

## instruments

...

**22.2 Restrictions on the retail distribution of mutual society shares**

- 22.2.1 R (1) The requirements in this section apply to a *firm* when dealing in or arranging a deal in a mutual society share with or for a *retail client* in the ~~EEA~~ United Kingdom where the *retail client* is to enter into the *deal* as buyer.

...

- 22.2.4 R ...

Title	Type of retail client	Additional conditions
<i>Certified high net worth investor</i>	... <del>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.6R; or</del> <del>(c) (b) a person (or persons) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) or (b) above.</del>	...
<i>Certified sophisticated investor</i>	... <del>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.7R; or</del> <del>(c) (b) an individual who meets the requirements for either (a) or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm's client.</del>	...
<i>Self-certified</i>	... <del>(b) an individual in an EEA</del>	...

<i>sophisticated investor</i>	<p><del>State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.8R; or</del></p> <p>(e) (b) an individual who meets the requirements for either (a) or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another <i>person</i> who is the <i>firm's</i> client.</p>	
-------------------------------	--	--

...

**22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds**

Restrictions

- 22.3.1 R (1) ...
- (2) A *firm* must not:
- (a) *sell an investment to a retail client in the EEA United Kingdom; or*
  - (b) communicate or approve an invitation or inducement to participate in, acquire or underwrite an *investment* where that invitation or inducement is addressed to or disseminated in such a way that it is likely to be received by a *retail client* in the *EEA United Kingdom*.

...

Exemptions

- 22.3.2 R ...

Title	Type of retail client	Additional conditions
<i>Certified high net worth investor</i>	<p>...</p> <p>(b) an individual in an <i>EEA State other than the UK</i> who meets requirements which are broadly equivalent to those set out in <i>COBS 4.12.6R</i>; or</p> <p>(e) (b) a <i>person</i> (or <i>persons</i>)</p>	...

	legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) <del>or</del> <del>(b)</del> above.	
<i>Certified sophisticated investor</i>	... <del>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.7R; or</del> <del>(c) (b) an individual who meets the requirements for either (a) or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm's client.</del>	...
<i>Self-certified sophisticated investor</i>	... <del>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.8R; or</del> <del>(c) (b) an individual who meets the requirements for either (a) or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm's client.</del>	...
...		

...

**Sch 1 Record keeping requirements**

...

Sch 1.3G	Handbook reference	Subject of record	Content of record	When record	Retention period
----------	--------------------	-------------------	-------------------	-------------	------------------

			must be made	
...				
<i>COBS</i> <u>9A.4.3EU</u> <u>9A.4.3UK</u>	Suitability (insurance-based investment products)	<i>Client</i> information for <i>suitability report</i> - details in <i>COBS</i> <u>9A.4.3EU</u> <u>9A.4.3UK</u> and <i>COBS</i> <u>9A.4.4EU</u> <u>9A.4.4UK</u>	From date of <i>suitability report</i>	For whichever is the longer of 5 years or the duration of the relationship with the <i>client</i>
...				
<i>COBS</i> <u>10A.7.2EU</u> <u>10A.7.2UK</u>	Appropriateness (MiFID provisions)	...		
<i>COBS</i> <u>10A.7.2AEU</u> <u>10A.7.2AUK</u>	Appropriateness (insurance-based investment products)	...		
<i>COBS</i> <u>11.5A.4EU</u> <u>11.5A.4UK</u>	<i>Client</i> orders	...		
<i>COBS</i> <u>11.5A.5EU</u> <u>11.5A.5UK</u>	<i>Client</i> orders	...		
...				
<i>COBS</i> <u>11.7A.5EU</u> <u>11.7A.5UK</u>	Personal account dealing (MiFID provisions)	...		
...				
<i>COBS</i> <u>11A.1.9EU</u> <u>11A.1.9UK</u>	Underwriting and placing	...		

...				
<i>COBS</i> <u>16A.3.1EU</u> <u>16A.3.1UK</u>	Confirmation to <i>clients</i> (MiFID provisions)	...		
<i>COBS</i> <u>16A.4.1EU</u> <u>16A.4.1UK</u>	<i>Periodic</i> <i>statements</i> (MiFID provisions)	...		
<i>COBS</i> <u>16A.4.2EU</u> <u>16A.4.2UK</u>	<i>Periodic</i> <i>statements</i> (insurance- based investment products)			
...				

...



## Annex B

## Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Annex Application (see ICOBS 1.1.2R)

1

Part 1: Who?		
Modifications to the general rule according to type of firm		
...		
3	Authorised professional firms	
3.1	R	This sourcebook (except for ICOBS 4.6) does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> except for:
		...
		(4) <u>the UK provisions implementing which implemented</u> articles 1(4), 17, 18, 19, 20, 23, and 24 of the <i>IDD</i> (see <i>ICOBS 2.2.2R</i> (communication to customers and financial promotions), <i>ICOBS 2.2.2AR</i> (marketing communications), <i>ICOBS 2.5.-1R</i> (the customer's best interests rule), <i>ICOBS 2.6</i> (Distribution of connected contracts through exempt persons), <i>ICOBS 4.1</i> (Information about the firm, its services and remuneration), <i>ICOBS 4.1A</i> (Means of communicating to customers), <i>ICOBS 4.3</i> (remuneration disclosure), <i>ICOBS 5.2</i> (Demands and needs), <i>ICOBS 5.3.3R</i> (Advice on the basis of a fair analysis), <i>ICOBS 5.3.4R</i> (Personalised explanation), <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 6A.3</i> (Cross-selling)), except to the extent that the <i>firm</i> is subject to equivalent rules of its <i>designated professional body</i> approved by the <i>FCA</i> .
3.2	G	Compliance with <u>the UK provisions of which implemented</u> the <i>Distance Marketing Directive</i> is dealt with in the Professional Firms sourcebook (see <i>PROF 5.4</i> ).
...		
6	Lloyd's	
6.1	R	<del>The Society must ensure that no member carries on motor vehicle liability insurance business at Lloyd's unless a claims representative has been appointed to act for that member in each EEA State other</del>

		than the <i>United Kingdom</i> , with responsibility for handling and settling a claim by an <i>injured party</i> . Otherwise, this <u>This</u> sourcebook does not apply to the <i>Society</i> .
--	--	---

Part 2: What?		
Modifications to the general application rule according to activities		
...		
2	Contracts of large risks	
2.1	R	Subject to Part 3 of this Annex:
		(1) this sourcebook does not apply to a <i>firm</i> distributing a <i>contract of large risks</i> where the risk is located outside the <del><i>European Economic Area</i></del> <i>United Kingdom</i> ;
		(2) only <i>ICOBS 2</i> (General matters) and <i>ICOBS 6A.3</i> (Cross-selling) apply to a <i>firm</i> distributing a <i>contract of large risks</i> for a <i>commercial customer</i> where the risk is located within the <del><i>European Economic Area</i></del> <i>United Kingdom</i> ; and
		(3) ...
		...
...		

Part 3: Where?		
Modifications to the general rule of application according to location		
1	EEA territorial scope rule: compatibility with European law [deleted]	
1.1	R	(1) <del>The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for guidance on this).</del>
		(2) <del>This rule overrides any other rule in this sourcebook.</del>
1.2	R	<del>In addition to the <i>EEA territorial scope rule</i>, the effect of the <i>E-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 8 of Part 4 for guidance on this).</del>

		[ <del>Note: article 3(3) of, and Annex to, the <i>E-Commerce Directive</i></del> ]	
2	Exemption for insurers: business with <del>non-EEA</del> <u>non-UK</u> customers via non-UK intermediaries		
2.1	R	This sourcebook does not apply to an <i>insurer</i> if:	
		(1)	the intermediary (whether or not an <i>insurance intermediary</i> ) in contact with the customer is not established in the <i>United Kingdom</i> ; and
		(2)	the <i>customer</i> is not <i>habitually resident</i> in, and, if applicable, the <i>State of the risk</i> is outside, <del>an EEA State</del> <u>the <i>United Kingdom</i></u> .
3	Exemption for insurers: business with non-UK EEA customers [ <del>deleted</del> ]		
3.1	R	<del>A rule in this sourcebook which goes beyond the minimum required by EU legislation does not apply to an insurer if the <i>customer</i> is <i>habitually resident</i> in (and, if applicable, the <i>State of the risk</i> is) an <i>EEA State</i> other than the <i>United Kingdom</i>, to the extent that the <i>EEA State</i> in question imposes measures of like effect.</del>	

Part 4: Guidance [ <del>deleted</del> ]			
4	The main extensions and restrictions to the general application rule		
4.1	G	The general application <i>rule</i> is modified in Parts 1 to 3 of this Annex and in certain chapters of this sourcebook.	
4.2	G	The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the general application <i>rule</i> , particularly in relation to territorial scope. However, for the majority of circumstances, the general application <i>rule</i> is likely to apply.	
2	The <i>Single Market Directives</i> 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- <i>UK</i> element. The <i>EEA</i> territorial scope <i>rule</i> is unlikely to apply if a <i>UK firm</i> is doing business from a <i>UK establishment</i> for a <i>client</i> located in the <i>United Kingdom</i> in relation to a <i>UK</i> product. However, if there is a non- <i>UK</i> element, the <i>firm</i> should consider whether:	
		(1)	it is subject to the directive;

		(2)	the business it is performing is subject to the directive; and
		(3)	the particular <i>rule</i> is within the scope of the directive.
		If the answer to all three questions is ‘yes’, the <i>EEA</i> territorial scope <i>rule</i> may change the effect of the general application <i>rule</i> .	
2.3	G	When considering a particular situation, a <i>firm</i> should also consider whether two or more directives apply.	
3	Insurance Distribution Directive: effect on territorial scope		
3.1	G	The <i>IDD</i> ’s scope covers most <i>firms</i> carrying on most types of <i>insurance distribution</i> .	
3.2	G	The <i>rules</i> in this sourcebook within the Directive’s scope are those implementing the minimum requirements in articles 1(4), 17, 18, 19, 20, 23 and 24(1) to (3) and (6) of the <i>IDD</i> set out in:	
		(1)	<i>ICOB</i> S 2.2.2R (communication to customers and financial promotions), <i>ICOB</i> S 2.2.2AR (marketing communications), <i>ICOB</i> S 2.5.1R (the customer’s best interests rule), <i>ICOB</i> S 2.6 (Distribution of connected contracts through exempt persons);
		(2)	<i>ICOB</i> S 4.1 (General requirements for insurance intermediaries and insurers), <i>ICOB</i> S 4.1A (Means of communicating to customers), <i>ICOB</i> S 4.3 (Remuneration disclosure);
		(3)	<i>ICOB</i> S 5.2 (Demands and needs), <i>ICOB</i> S 5.3.4R (Personalised explanation), <i>ICOB</i> S 5.3.3R (Advice on the basis of a fair analysis); and
		(4)	<i>ICOB</i> S 6.1 (Providing product information to customers: general) and <i>ICOB</i> S 6 Annex 3R (Providing product information by way of a standardised insurance information document); and
		(5)	<i>ICOB</i> S 6A.1.4R (Ensuring the customer can make an informed decision) and <i>ICOB</i> S 6A.3 (Cross-selling).
3.2A	G	A Member State is entitled to impose additional requirements within the Directive’s scope in the ‘general good’. (See recital 52 to, and article 22 of, the <i>IDD</i> .)”	
3.2B	G	The additional requirements within the scope of the <i>IDD</i> and found in this sourcebook are those that:	
		(1)	deal with communication to <i>customers</i> and <i>financial promotions</i> , the <i>customer’s best interests rule</i> and additional responsibilities of <i>insurance distributors</i> (see <i>ICOB</i> S 2.2.2R,

			<i>ICOB</i> S 2.2.2AR, <i>ICOB</i> S 2.5. 1R and <i>ICOB</i> S 2.6); and
		(2)	require the provision of pre-contract information or the provision of advice on the basis of a fair and personal analysis (see <i>ICOB</i> S 4 (Information about the firm, its services and remuneration), <i>ICOB</i> S 5.2 (Demands and needs), <i>ICOB</i> S 5.3.3R (Advice on the basis of a fair analysis), <i>ICOB</i> S 6.1A.5R (Responsibility for producing the standardised insurance product information document), <i>ICOB</i> S 6.1 (Providing product information to customers: general); <i>ICOB</i> S 6A.1.4R (Ensuring the customer can make an informed decision) and <i>ICOB</i> S 6A.3 (Cross-selling)).
3.3	G	The <i>IDD</i> places responsibility for requirements in this sourcebook within the Directive's scope (both minimum and additional requirements) on the <i>Home State</i> , except in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis) (see recital 22 to, and article 7(2) of, the <i>IDD</i> ). Accordingly the general rules on territorial scope are not modified by the <i>IDD</i> except:	
		(1)	for an <i>EEA firm</i> providing <i>passport</i> ed activities under the Directive in the <i>United Kingdom</i> , additional rules within the Directive's scope have their unmodified territorial scope unless the <i>Home State</i> imposes measures of like effect; and
		(2)	for <i>insurance distribution</i> business carried on by <i>insurers</i> :
		(a)	minimum and additional requirements apply to a <i>UK firm</i> unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Host State</i> regulator; and
		(b)	paragraph (1), and 3.3AG, below, apply in the same way unless the responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Home State</i> regulator.
3.3A	G	An <i>EEA firm</i> acting as the principal of an <i>appointed representative</i> carrying on <i>insurance distribution activities</i> from an establishment in the <i>United Kingdom</i> is required to ensure that its <i>appointed representative</i> complies with this sourcebook.	
4	Solvency II Directive non-life business: effect on territorial scope		
4.1	G	The <i>Solvency II Directive's</i> scope covers <i>insurers</i> authorised under that Directive conducting <i>general insurance business</i> .	
4.2	G	The rules in this sourcebook within the <i>Solvency II Directive's</i>	

		scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the insurance contract (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 8</i> (Claims handling) except those parts of <i>ICOBS 8.2</i> (Motor vehicle liability insurers) implementing the <i>Consolidated Motor Insurance Directive</i> .
4.3	G	The <i>Solvency II Directive</i> specifies minimum information requirements and permits <i>EEA States</i> to adopt additional mandatory rules. (See articles 178, 180, 183, 184 of the <i>Solvency II Directive</i> .)
4.4	G	If the <i>State of the risk</i> is an <i>EEA State</i> , the <i>Solvency II Directive</i> provides that the applicable information rules shall be determined by that state. Accordingly, if the <i>State of the risk</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 risk</i> is another <i>EEA State</i> . The territorial scope of other <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the <i>Solvency II Directive</i> explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the ‘general good’. (See articles 156 and 180 of the <i>Solvency II Directive</i> .)
5	Solvency II Directive life business: effect on territorial scope	
5.1	G	The <i>Solvency II Directive’s</i> scope covers <i>long-term insurers</i> which are <i>Solvency II firms</i> conducting <i>long-term insurance business</i> .
5.2	G	The <i>rules</i> in this sourcebook within the Directive’s scope are the cancellation <i>rules</i> (see <i>ICOBS 7</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>contract of insurance</i> (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 6</i> (Product information) and <i>ICOBS 8</i> (Claims handling) except <i>ICOBS 8.2</i> (Motor vehicle liability insurers)).
5.3	G	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 <i>policyholder</i> of the essential elements of the commitment.
5.4	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 laid down 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 <i>rules</i> , 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 156,

		180, 185 and 186 of the <i>Solvency II Directive</i> .)
6		Motor Insurance Directives: effect on territorial scope
6.1	G	The scope of the <i>Consolidated Motor Insurance Directive</i> covers insurers conducting <i>motor vehicle liability insurance business</i> . The <i>rules</i> in this sourcebook within the Directive's scope are those regarding the appointment of claims representatives and handling of claims by <i>injured parties</i> (see <i>ICOBS 8.2</i> ).
6.2	G	The Directive requires a <i>motor vehicle liability insurer</i> to appoint a claims representative in each <i>EEA State</i> other than its <i>Home State</i> . It specifies minimum requirements regarding function and powers of claims representatives in handling claims and regarding the settlement of claims by <i>injured parties</i> .
6.3	G	The Directive's provisions apply to <i>motor vehicle liability insurers</i> for which the <i>United Kingdom</i> is the <i>Home State</i> . (See articles 21 and 22 of the <i>Consolidated Motor Insurance Directive</i> ).
7		Distance Marketing Directive: effect on territorial scope
7.1	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 (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 6</i> (Product information), and <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision)), the cancellation <i>rules</i> (see <i>ICOBS 7</i> ) and the other specific <i>rules</i> implementing the Directive (see <i>ICOBS 3.1</i> ).
7.2	G	In the <i>FCA'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 <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> 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> .)
7.3	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>United Kingdom</i> or of any other <i>EEA State</i> or <i>non-EEA state</i> ).
7.4	G	Conversely, the territorial scope of the relevant <i>rules</i> in this sourcebook is modified as necessary so that they do 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> .
7.5	G	In the <i>FCA's</i> view:
		(1) the 'country of origin' basis of the Directive is in line with that of the <i>E-Commerce Directive</i> and the <i>IDD</i> ; (See recital 6 to the <i>Distance Marketing Directive</i> .)
		(2) for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Solvency II 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 cancellation rules derived from the <i>Solvency II 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>Distance Marketing Directive</i> .)
8		Electronic Commerce Directive: effect on territorial scope
8.1	G	The <i>E-Commerce Directive's</i> scope covers every firm carrying on an electronic commerce activity. Every rule in this sourcebook is within the Directive's scope.
8.2	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 at least 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> .
8.3	G	Conversely, a <i>firm</i> that is a national of the <i>United Kingdom</i> or another <i>EEA State</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>E-Commerce Directive</i> .)
8.4	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>FCA</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>Solvency II Directive</i> and permits <i>EEA States</i> to continue to apply their advertising rules in the 'general good'.
8.5	G	Where the derogation applies, the <i>rules</i> on <i>financial promotion</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>E-Commerce Directive</i> ; Annex to European Commission Discussion Paper



		MARKT/2541/03.)	
8.6	G	In the <i>FCA'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 the <i>IDD</i> ;
		(2)	overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
8.7	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 52 to the <i>IDD</i> , recital 6 to the <i>Distance Marketing Directive</i> , article 3 of, and the Annex to, the <i>E-Commerce Directive</i> .)	

...

### 3 Distance communications

#### 3.1 Distance marketing

##### Application

- 3.1.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.

...

- 3.1.19 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 United Kingdom*, 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* the *United Kingdom*.

...

#### 3.2 E-Commerce

##### Application

- 3.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an establishment in the *United Kingdom*, with or for a *person* in the *United Kingdom* or another *EEA State*.

##### Information about the firm and its products or services

- 3.2.2 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:

...

(5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:

(a) ...

(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

...

...

3.2.5 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.

...

...

### 3 Annex 1G Guidance on the UK provisions which implemented the Distance Marketing Directive

...

Q7. How ~~does~~ do the UK provisions which implemented the Directive apply to insurance intermediaries' services?

The *FCA* expects the UK provisions which implemented the *Distance Marketing Directive* to apply to *insurance intermediaries'* services only in the small minority of cases where:

- the *firm* concludes a *distance contract* with a *consumer* covering its *insurance distribution activities* which is additional to any insurance contract which it is marketing; and
- that *distance contract* is concluded other than merely as a stage in the *effecting* or *carrying out* of an insurance contract by the *firm* or another *person*: in other words it has some continuity independent of an insurance contract, as opposed, for example, to being concluded as part of marketing an insurance contract.

Q8. Can you give examples of when the UK provisions which implemented the Directive would and would not apply to insurance intermediaries' services?

The ~~rules implementing~~ which implemented the *Distance Marketing Directive* will not apply in the typical case where an *insurance intermediary* sells an insurance contract to a *consumer* on a one-off basis, even if the *insurance intermediary* is

involved in the *renewal* of that contract and handling claims under it.

Nor will the UK provisions which implemented the Directive apply if an *insurance intermediary*, in its terms of business, makes clear that it does not, in conducting *insurance distribution activities*, act contractually on behalf of, or for, the *consumer*.

An example of when the UK provisions which implemented the *Distance Marketing Directive* would apply would be a *distance contract* under which an *insurance intermediary* agrees to provide advice on a *consumer's* insurance needs as and when they arise.

...

### 3 Annex 2R Distance marketing information

...

Distance marketing information	
The firm	
...	
(2)	Where the <i>firm</i> has a representative established in the <del><i>consumer's EEA State of residence</i></del> <i>United Kingdom</i> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with the representative.
...	
The distance contract	
...	
(16)	The <del><i>EEA State</i></del> or <del><i>States</i></del> 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. <del>[deleted]</del>
...	

...

## 4 Information about the firm, its services and remuneration

...

### 4.1A Means of communication to customers

...

Means of communication to customers; non-telephone sales

4.1A.2 R ...

(2) The *firm* must communicate the information in (1):

...

(b) in an official language of the ~~State of the risk~~ United Kingdom where the State of the risk is the United Kingdom, or in any other language agreed by the parties; and

...

...

...

## 6 Product information

...

### 6.2 Pre-contract information: general insurance contracts

...

Solvency II Directive derived disclosure requirements

...

6.2.3 R (1) ~~An EEA firm~~ A firm which has its head office in the European Economic Area must inform a *customer*, before any commitment is entered into, of the ~~EEA State~~ state in which the head office or, where appropriate, the branch with which the contract is to be concluded, is situated.

(2) Any documents issued to the *customer* must convey the information required by this *rule*.

...

6.2.4 R ~~An EEA firm~~ A firm which has its head office in the European Economic Area must ensure that the contract or any other document granting cover, together with the insurance proposal where it is binding upon the *customer*, states the address of the head office, or, where appropriate, of the branch of the *firm* which grants the cover.

...

...

### 6.3 Pre- and post-contract information: pure protection contracts

Solvency II Directive derived disclosure requirements

6.3.1 R ...

Information to be communicated before conclusion	
...	
(2)	The name of the <del>EEA State</del> state in which the head office and, where appropriate, the agency or branch concluding the contract is situated.
...	

...

## 6 Annex 1R Responsibilities of insurers and insurance intermediaries in certain situations

...

	Situation	Insurance intermediary's responsibility	Insurer's responsibility
...			
(2)	<p><i>Insurance intermediary does not operate from UK establishment, is not authorised, is selling connected contracts or is authorised professional firm carrying on non-mainstream regulated activities</i></p> <p><i>Insurer operates from UK establishment</i></p> <p><i>Customer habitually resident in the <del>EEA</del> United Kingdom</i></p>	None	Production and providing (but for <i>pure protection contracts</i> no <i>policy summary</i> is required unless the <i>insurance intermediary</i> does not operate from a <i>UK establishment</i> )
(3)	<p>As (2) but <i>customer habitually resident outside the <del>EEA</del> United Kingdom</i> and insurer not in contact with the <i>customer</i></p>	None	None
(4)	<p>As (2) but <i>customer habitually resident outside the <del>EEA</del> United Kingdom</i> and insurer in contact with the <i>customer</i></p>	None	Production and providing

...			
-----	--	--	--

...

### 6 Annex 3 Providing product information by way of a standardised insurance information document:

[**Note:** the *IDD IPID Regulation* is ~~directly~~ applicable to *IDD insurance intermediaries*, *IDD insurance undertakings* and *IDD ancillary insurance intermediaries*.]

This annex belongs to *ICOBS 6.1.10AR*.

#### 1 Effect of provisions marked ‘~~EU~~’ ‘UK’

- 1.1 R (1) Provisions in this section marked “~~EU~~” “UK” apply in relation to a *firm* to which the *IPID Regulation* is ~~not directly applicable~~ does not apply, as if they were *rules*.
- (2) In this annex, a word or phrase found in a provision marked “~~EU~~” “UK” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

...

...

#### Name and company logo of the manufacturer

- 2.4 ~~EU~~  
UK 1(1) The name of the manufacturer of the non-life insurance product, ~~the Member State where that manufacturer is registered~~, its regulatory status, and, where relevant, its authorisation number shall immediately follow the title ‘insurance product information document’ at the top of the first page.
- 2.5 ~~EU~~  
UK 1(2) The manufacturer may insert its company logo to the right of the title.

...

#### Reference to complete pre-contractual and contractual information

- 2.6 ~~EU~~  
UK 2 The insurance product information document shall state prominently that complete pre-contractual and contractual information about the non-life insurance product is provided to the customer in other documents. That statement shall be placed immediately below the name of the manufacturer of the non-life insurance product.

...

#### 3 How must the IPID be presented and formatted?

- 3.1 R The *IPID* must:
- ...
- (4) be written in the official languages, or in one of the official languages, used in the part of the ~~Member State~~ state where the *policy* is offered or, if agreed by the *consumer* and the *insurance distributor*, in another language;
- ...

## Length

- 3.2 ~~EU~~  
UK 3 The insurance product information document shall be set out on two sides of A4-sized paper when printed. Exceptionally, if more space is needed, the insurance product information document may be set out on a maximum of three sides of A4-sized paper when printed. Where a manufacturer uses three sides of A4-sized paper, it shall, upon request by the ~~competent authority~~ Financial Conduct Authority, be able to demonstrate that more space was needed.

...

## Presentation and order of content

- 3.3 ~~EU~~  
UK 4(1) The information of the insurance product information document listed in ~~in~~ Article 20(8) of Directive (EU) 2016/97 shall be presented in different sections and in accordance with the structure, lay-out, headings and sequence as set out in the standardised presentation format in the Annex to this Regulation, using a font size with an x-height of at least 1,2 mm.
- 3.4 ~~EU~~  
UK 4(2) The length of the sections may vary, depending on the amount of information that is to be included in each section. Information about add-ons and optional covers shall not be preceded by ticks, crosses or exclamation marks.
- 3.5 ~~EU~~  
UK 4(3) Where the insurance product information document is presented using a durable medium other than paper, the size of the components in the layout may be changed, provided that the layout, headings and sequence of the standardised presentation format, as well as the relative prominence and size of the different elements, are retained.
- 3.6 ~~EU~~  
UK 4(4) Where the dimensions of the durable medium other than paper are such that a layout using two columns is not feasible, a presentation using a single column may be used, provided that the sequence of the sections is as follows:

...

- 3.7 EU 4(5) The use of digital tools, including layering and pop-ups shall be permitted, provided that all the information referred to in Article 20(8) of Directive (EU) 2016/97 is provided in the main body of the insurance product information document and that the use of such tools does not distract the customer's attention from the content of the main document.
- UK
- Information provided through layering and pop-ups shall not include marketing or advertising material.

...

## Plain language

- 3.8 EU 5 The insurance product information document shall be drafted in plain language, facilitating the customer's understanding of the content of that document, and shall focus on key information which the customer needs to make an informed decision. Jargon shall be avoided.
- UK

...

## Headings and information thereunder

- 3.9 EU 6(1) The sections of the insurance product information document shall have the following headings and the following information thereunder:
- UK
- (a) the information on the type of insurance referred to in Article 20(8)(a) of Directive (EU) 2016/97 shall be included under the heading 'What is this type of insurance?', at the top of the document;
  - (b) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading 'What is insured?'. Each piece of information listed in this section shall be preceded by a green 'tick' symbol;
  - (c) the information on the insured sum referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading 'What is insured?';
  - (d) the information on geographical scope, where applicable, referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading 'Where am I covered?'. Each piece of information listed in this section shall be preceded by a blue 'tick' symbol;
  - (e) the information on a summary of the excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading 'What is not insured?'. Each piece



of information in this section shall be preceded by a red ‘X’ symbol;

- (f) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be included under the heading ‘Are there any restrictions on cover?’. Each piece of information listed in this section shall be preceded by an orange exclamation mark symbol;
- (g) the information on the relevant obligations referred to in points (e), (f) and (g) of Article 20(8) of Directive (EU) 2016/97 shall be included under the heading ‘What are my obligations?’;
- (h) the information on the means and duration of payment of premiums referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be included under the heading ‘When and how do I pay?’;
- (i) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be included under the heading ‘When does the cover start and end?’;
- (j) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be included under the heading ‘How do I cancel the contract?’.

...

...

#### Use of icons

3.10

EU  
UK

- 7(1) Each section shall further be headed by icons that visually represent the content of the respective section heading, as follows:
- (a) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an umbrella, which shall be white on a green background or green on a white background;
  - (b) the information on the geographical scope of the insurance cover referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of a globe, which shall be white on a blue background or blue on a white background;
  - (c) the information on excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an X symbol within a triangle, which shall be white on a red background or red on a white background;

- (d) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be headed by an exclamation mark (!) within a triangle, which shall be white on an orange background or orange on a white background;
- (e) the information on the obligations at the start of the contract, during the term of the contract and in the event that a claim is made, referred to in points (e), (f) and (g) of 20(8) of Directive (EU) 2016/97, respectively, shall be headed by an icon of a handshake, which shall be white on a green background or green on a white background;
- (f) the information on the means and duration of payments referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be headed by an icon of coins, which shall be white on a yellow background or yellow on a white background;
- (g) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be headed by an icon of an hourglass, which shall be white on a blue background or blue on a white background;
- (h) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be headed by an icon of a hand with an open palm on a shield, which shall be white on a black background, or black on a white background.

- |      |                        |   |
|------|------------------------|---|
| 3.11 | <u>EU</u><br><u>UK</u> | 7(2) All icons shall be displayed in a manner consistent with the standardised presentation format in the Annex.  |
| 3.12 | <u>EU</u><br><u>UK</u> | 7(3) The icons referred to in paragraphs 1 and 2 may be presented in black and white where the insurance product information document is printed or photocopied in black and white. |

...

...

## 8 Claims handling

...

### 8.2 Motor vehicle liability insurers

Application: who? what?

- |       |   |   |
|-------|---|---|
| 8.2.1 | R | (1) ...   |
|       |   | (2) The <i>rules</i> in this section relating to the appointment of claims representatives apply: |

- (a) ~~in relation to claims by injured parties resulting from accidents occurring in an EEA State other than the injured party's EEA State of residence which are caused by the use of vehicles insured through an establishment in, and normally based in, an EEA State other than the injured party's EEA State of residence; and [deleted]~~
- (b) in relation to claims arising out of events occurring, and risks situated, in the *United Kingdom*, and covered by ~~an incoming EEA firm on a services basis~~ a firm operating from an establishment in the *European Economic Area*.

(3) ...

...

...

8.2.2A R ~~A person carrying on, or seeking to carry on, motor vehicle liability insurance business must have a claims representative in each EEA state other than the *United Kingdom*. [deleted]~~

8.2.2B R ~~An incoming EEA firm~~ A firm operating from an establishment in the *European Economic Area* carrying on motor vehicle liability insurance business and covering *UK* risks on a services basis must have a claims representative in the *United Kingdom* to deal with claims arising out of events occurring in the *United Kingdom*.

...

#### Conditions for appointing claims representatives

8.2.3 R A firm must ensure that each claims representative:

...

(2) is resident or established in the ~~EEA State~~ where it is appointed *United Kingdom*;

...

(5) is capable of examining cases in the official language(s) of the ~~EEA State of residence of the injured party~~ *United Kingdom*.

...

...

#### Notifying the appointment of claims representatives

8.2.5 R (1) A firm must notify to the ~~information centres of all EEA States~~

Motor Insurers' Information Centre:

- (a) the name and address of the claims representative which they have appointed in ~~each of the EEA States~~ the United Kingdom;

...

...

...

...

**8.4 Employers' Liability Insurance**

Application

8.4.1 R ...

- (2) This section applies to:

...

in relation to *general insurance contracts* and, in either case, including business accepted under *reinsurance* to close;

- (b) ~~all incoming EEA firms or incoming Treaty firms falling within (a) including those providing cross border services.~~  
[deleted]

...

...

## Annex C

## Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, except where otherwise indicated.

### 1 Application and purpose

...

### 1.3 General application: where?

Location of the customer

1.3.1 R Except as set out in this section, *MCOB* applies if the *customer* of a *firm* carrying on *home finance activities* is resident in:

- (1) the *United Kingdom*; ~~or~~
- (2) ~~another *EEA State* where the activity is carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*;~~

at the time that the *home finance activity* is carried on.

1.3.1A R (1) ~~The provisions of *MCOB* listed in *MCOB* 1.3.1AR(2) apply to a *UK firm* where it carries on *MCD credit intermediation activity* for a *customer* who is resident in another *EEA State* through an establishment maintained by the *firm* in that State.~~

(2) ~~The provisions mentioned in *MCOB* 1.3.1AR(1) are:~~

- (a) *MCOB* 2A.1.1R(2);
- (b) *MCOB* 2A.1.4R;
- (c) *MCOB* 2A.2.1R and 2A.2.2G; and
- (d) ~~*MCOB* 7.6.28R. [deleted]~~

~~[Note: article 34(2) of the *MCD*]~~

Incoming *EEA* credit intermediaries

1.3.1B R (1) ~~The application of *MCOB* to an *incoming EEA firm* that is an *MCD credit intermediary* is modified to the extent necessary to be compatible with European law.~~

(2) ~~*MCOB* 1.3.1BR(1) overrides every other *rule* in this sourcebook.~~

[deleted]

[Note: article 34(2) of the MCD]

- 1.3.1C G ~~Guidance on MCOB 1.3.1AR and MCOB 1.3.1BR is in MCOB 1 Annex 5. For applicable rules in relation to knowledge and competence requirements for staff, incoming EEA firms should also refer to TC 2.1.5AR to TC 2.1.5FG and to the territorial application rules in TC Appendices 1 and 2.~~  
[deleted]

...

Electronic commerce activities and communications

- 1.3.3 R ~~This sourcebook does not apply to an incoming ECA provider acting as such.~~ [deleted]

Distance contracts entered into from an establishment in another EEA State

- 1.3.4 R (1) ~~The rules in (2) do not apply to a firm with respect to a regulated mortgage activity or a home purchase activity exclusively concerning a distance contract if the following conditions are satisfied:~~
- (a) ~~the firm carries on the activity from an establishment maintained by the firm in an EEA State other than the United Kingdom; and~~
  - (b) ~~either the EEA State:~~
    - (i) ~~has implemented the Distance Marketing Directive; or~~
    - (ii) ~~has obligations in its domestic law corresponding to those provided for by the Distance Marketing Directive;~~

~~and, in either case, with the result that the obligations provided for by the Distance Marketing Directive (or corresponding obligations) are applied by that State when the firm carries on that activity; and~~
  - (c) ~~the firm is a national of an EEA State or a company or firm mentioned in article 54 of the Treaty.~~
- (2) ~~The rules which do not apply are:~~
- (a) ~~initial disclosure requirements in MCOB 4.4A (in respect of regulated mortgage contracts) and MCOB 4.10 (in respect of home purchase plans);~~
  - (b) ~~MCOB 4.5 (Additional disclosure for distance mortgage~~

~~mediation contracts and distance home purchase mediation contracts with consumers);~~

- ~~(e) MCOB 4.6 (Cancellation of distance mortgage mediation contracts) and distance home purchase mediation contracts);~~
- ~~(d) MCOB 5 (Pre-application disclosure);~~
- ~~(e) MCOB 6 (Disclosure at offer stage);~~
- ~~(f) MCOB 7.6.7R to MCOB 7.6.17R (Further advances);~~
- ~~(g) MCOB 8.3 (Application of rules in MCOB 4) to the extent that it applies MCOB 4.4A to MCOB 4.6;~~
- ~~(h) [deleted]~~
- ~~(i) MCOB 9.3 (Pre-application disclosure);~~
- ~~(j) MCOB 9.4 (Content of illustrations); and~~
- ~~(k) MCOB 9.5 (Disclosure at offer stage for equity release transactions). [deleted]~~

Distance contracts with retail customers

1.3.5 G ...

(1) *Consumer*

The rules which implemented the Distance Marketing Directive ~~applies~~ apply for distance contracts with ‘any natural person who is acting for purposes which are outside his trade, business or profession’, for which the term ‘consumer’ has been adopted. ...

(2) *Distance contract*

...

- (a) ... If a *firm* normally operates face-to-face and has no facilities in place enabling a *customer* to deal with it customarily by distance means, the rules which implemented the Distance Marketing Directive will not apply. ...

...

...

MCOB 1 Annex 5 (Guidance on the application of MCOB for incoming EEA MCD credit intermediaries and for UK firms carrying out MCD credit intermediation activities in another EEA State) is deleted in its entirety. The deleted text is not shown but the Annex is marked [deleted] as shown below.

**1 Annex 5G Guidance on the application of MCOB for incoming EEA MCD credit intermediaries and for UK firms carrying out MCD credit intermediation activities in another EEA State [deleted]**

**2 Conduct of business standards: general**

...

**2.7A E-Commerce**

Application

- 2.7A.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an establishment in the *United Kingdom*, with or for a person in the *United Kingdom* ~~or another EEA state~~, in relation to a *home finance transaction*.

Information about the firm and its products or services

- 2.7A.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:

...

- (5) if it is a *professional firm*, ~~or a person regulated by the equivalent of a designated professional body in another EEA State~~:

...

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

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

...

...

- 2.7A.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*]

**2A Mortgage Credit Directive**



...

**2A.3 Foreign currency loans**

...

2A.3.3 R Where:

- (1) an *MCD regulated mortgage contract* is denominated in ~~the currency of the EEA State in which the consumer is resident~~ pound sterling (“currency A”); and

...

2A.3.4 R The alternative currency referred to in *MCOB 2A.3.1R(1)* must be either:

...

- (2) ~~the currency of the EEA State in which the consumer either was resident at the time that the MCD regulated mortgage contract was entered into or is currently resident~~ pound sterling.

...

...

**3A Financial promotions and communications with customers****3A.1 Application and purpose**

...

3A.1.13 R This chapter applies to a *firm* in relation to:

...

- (3) the approval of a *non-real time financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement for communication to a person in the United Kingdom*;
- (4) ~~the communication or approval for communication of a financial promotion that is an electronic commerce communication to a person in an EEA State other than in the United Kingdom; and [deleted]~~
- (5) ~~the communication or approval for communication of a financial promotion in relation to an MCD regulated mortgage contract to a person in an EEA State other than in the United Kingdom. [deleted]~~

...

Exceptions to territorial scope: financial promotions of qualifying credit relating to distance contracts

- 3A.1.16 R (1) ~~Notwithstanding MCOB 3A.1.13R and MCOB 3A.1.15R, where a firm which satisfies the conditions in (2) communicates a financial promotion of qualifying credit, the rules in (3) do not apply.~~
- (2) ~~The conditions are that:~~
- (a) ~~the firm communicates the financial promotion of qualifying credit from an establishment maintained by the firm in an EEA State other than the United Kingdom, and not from an establishment maintained by the firm in the United Kingdom or outside the EEA;~~
  - (b) ~~either that EEA State:~~
    - (i) ~~has implemented the Distance Marketing Directive;~~  
~~or~~
    - (ii) ~~has obligations in its domestic law corresponding to those provided for by the Distance Marketing Directive;~~
  - (c) ~~the financial promotion of qualifying credit relates, exclusively, to a distance contract, for the conclusion of which the obligations provided for by the Distance Marketing Directive (or corresponding obligations) are applied by that state; and~~
  - (d) ~~the firm is a national of an EEA State or a company or firm mentioned in article 54 of the Treaty.~~
- (3) ~~The rules which do not apply are:~~
- (a) ~~MCOB 3A.3.2R (Name and contact point); and~~
  - (b) ~~MCOB 3A.4.1R(1) and (2) (Real time qualifying credit promotions). [deleted]~~

...

### 3B MCD general information

#### 3B.1 Provision of general information

...

- 3B.1.2 R A firm must make available clear and comprehensible information about MCD regulated mortgage contracts at all times on paper, or on another durable medium or in electronic form, that includes:

...

- (3) the forms of security, ~~including, where applicable, the possibility for it to be located in a different EEA State;~~

...

...

**4 Advising and selling standards**

...

**4.5 Additional disclosure for distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers**

- 4.5.1 G (1) There are certain additional disclosure requirements laid down by the rules which implemented the Distance Marketing Directive that will have to be provided by a *mortgage intermediary*, a *home purchase intermediary* and a *SRB intermediary* to a *consumer* prior to the conclusion of a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract*. ...

...

...

**4 Annex 3R Additional information requirements in respect of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with consumers**

...

<b>Additional information for distance contracts with retail customers consumers</b>	
All the contractual terms and conditions on which the service will be provided including, in particular, the following information:	
(1)	where the <i>firm</i> has a representative established in the <del><i>consumer's EEA State or other country of residence</i></del> <u><i>United Kingdom</i></u> , the identity of that representative and the geographical address relevant to the <i>consumer's</i> relations with him;
...	
(6)	details of:
(a)	<del>the EEA State or States whose laws are taken by the firm as a basis for the establishment of relations with the customer</del> prior to the conclusion of the <i>regulated mortgage contract</i> ,

		<i>home purchase plan or regulated sale and rent back agreement;</i> <u>[deleted]</u>
	...	

...

**5A MCD Pre-application disclosure**

...

**5A European Standardised Information Sheet (ESIS)**

**Annex  
1R**

...

Introduction
...
3. Main features of the loan
<p>Amount and currency of the loan to be granted: [value][currency]</p> <p>(Where applicable) This loan is not in <del>[national currency of the borrower]</del> pound sterling.</p> <p>(Where applicable) The value of your loan in <del>[national currency of the borrower]</del> sterling could change.</p> <p>(Where applicable) For example, if the value of <del>[national currency of the borrower]</del> sterling fell by 20% relative to [credit currency], the value of your loan would increase to [insert amount in <del>national currency of the borrower</del> sterling]. However, it could be more than this if the value of <del>[national currency of the borrower]</del> sterling falls by more than 20%.</p> <p>(Where applicable) The maximum value of your loan will be [insert amount in <del>national currency of the borrower</del> sterling]. (Where applicable) You will receive a warning if the credit amount reaches [insert amount in <del>national currency of the borrower</del> sterling]. (Where applicable) You will have the opportunity to [insert right to renegotiate foreign currency loan or right to convert loan into [relevant currency] and conditions].</p> <p>...</p>
6. Amount of each instalment
<p>...</p> <p>(Where applicable) The value of the amount you have to pay in <del>[national currency of the borrower]</del> sterling each [frequency of instalment] could change. (Where applicable) Your payments could increase to [insert maximum amount in <del>national</del></p>

<p><del>currency of the borrower sterling</del> each [insert period]. (Where applicable) For example, if the value of <del>[national currency of the borrower]</del> sterling fell by 20% relative to [credit currency], you would have to pay an extra [insert amount in <del>national currency of the borrower sterling</del>] each [insert period]. Your payments could increase by more than this.</p> <p>(Where applicable) The exchange rate used for converting your repayment in [credit currency] to <del>[national currency of the borrower]</del> sterling will be the rate published by [name of institution publishing exchange rate] on [date] or will be calculated on [date] using [insert name of benchmark or method of calculation].</p> <p>...</p>
12. Complaints
<p>...</p> <p><del>(Where applicable) or you can contact FIN-NET for details of the equivalent body in your own country.</del></p>
...

**5A Instructions to complete the ESIS**  
**Annex 2**

...

...				
3	Section '1. Lender'			
...				
3.3	R	<del>Where the <i>MCD-regulated mortgage contract</i> is offered at a distance, the <i>firm</i> must, where applicable, provide the name and geographical address of the <i>MCD mortgage lender's</i> representative in the <i>EEA State</i> where the <i>consumer</i> is resident. [deleted]</del>		
...				
6	Section '4. Interest rate' and other costs			
...				
6.6	R	...		
		(3)	Where there is no cap, the example required by (1) must illustrate the <i>APRC</i> at the highest <i>borrowing rate</i> in at least the last 20 years. Or, where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for which such data is available, based on the highest value of any	

			external reference rate used in calculating the borrowing rate, where applicable, or the highest value of a benchmark rate specified by the <i>FCA</i> <del>or another competent authority or the European Banking Authority</del> where the <i>MCD mortgage lender</i> does not use an external reference rate.
...			
8	Section '6. Amount of each instalment'		
...			
8.5	R	...	
		(3)	Where there is no cap, the illustration under (1) must illustrate the level of instalments at the highest <i>borrowing rate</i> in the last 20 years, or where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for which such data is available, based on:
			(a) ...
			(b) or the highest value of a benchmark rate specified by:
			(i) the <i>FCA</i> in <i>MCOB 5A</i> Annex 2, 6.8R to 6.10G;
			(ii) <del>another competent authority; or</del>
			(iii) <del>the European Banking Authority</del>
			where the <i>MCD mortgage lender</i> does not use an external reference rate.
		...	
...			
14	Section '12. Complaints'		
...			
14.3	R		<del>In the case of an <i>MCD-regulated mortgage contract</i> with a consumer who is resident in another <i>EEA State</i>, the firm must refer to the existence of FIN-NET (<a href="http://ec.europa.eu/internal_market/fin-net/">http://ec.europa.eu/internal_market/fin-net/</a>) [deleted]</del>
...			

## 6 Disclosure at the offer stage

...

**6.5 Mortgages: information to be provided in the offer document or separately**

...

Distance contracts with retail customers

6.5.6 R If a *firm* makes an offer to a *consumer* with a view to entering into a *regulated mortgage contract* which is a *distance contract*, it must provide the *consumer* with the following information with the *offer document*:

- (1) ~~the EEA State or States whose laws are taken by the firm as a basis for the establishment of relations with the customer prior to the conclusion of the regulated mortgage contract;~~

[deleted]

...

...

**6 Annex 1 Distance home purchase plans: information to be provided to retail customers**

...

1.1	R	Distance home purchase plans: information to be provided to retail customers	
		...	
		(2)	the identity of the representative of the <i>home purchase provider</i> established in the <del>consumer's EEA State of residence</del> <b>UK</b> and the geographical address relevant for the customer's relations with the representative, if such a representative exists;
		...	
		(11)	<del>the EEA State or States whose laws are taken by the home purchase provider as a basis for the establishment of relations with the retail customer prior to the conclusion of the distance contract;</del> [deleted]
		...	

...

**6A MCD disclosure at the offer stage**

...

**6A.5 MCD distance contracts with retail customers**

6A.5.1 R If a *firm* makes an offer to a *consumer* with a view to entering into or varying an *MCD regulated mortgage contract* which is a *distance contract*, it must provide the *consumer* with the following information with the *offer document*:

- (1) ~~the *EEA State* or states whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the *MCD regulated mortgage contract*;~~  
[deleted]

...

...

## 7A Additional MCD disclosure: start of contract and after sale

...

### 7A.4 Foreign currency loans and significant exchange-rate movement disclosure

7A.4.1 R (1) A *firm* must warn any *consumer* with a *foreign currency loan*, on a regular basis, where the value of either:

- (a) the *total amount payable* by the *consumer* which remains outstanding; or  
 (b) the regular instalments;

varies by more than 20% from what it would be if the exchange rate between the currency of the *MCD regulated mortgage contract* and the other currency, applicable at the time of the conclusion of the *MCD regulated mortgage contract*, were applied.

...

...

## 8 Equity release: advising and selling standard

...

### 8.2 Purpose

...

8.2.2 G ...

- (3) This chapter also ~~implements~~ implemented certain requirements of the *Distance Marketing Directive* in relation to *distance mortgage mediation contracts*.



...

**10A MCD Annual Percentage Rate of Charge**

...

**10A.3 APRC: additional assumptions**

10A.3.1 R ...

(12) In the case of a *shared equity credit agreement*:

(a) ...

(b) percentage increases in value of the immovable property which secures the *shared equity credit agreement*, and the rate of any inflation index referred to in the agreement, must be assumed to be:

(i) a percentage equal to the higher of:

(aa) ...

(bb) the level of inflation in the *EEA State* state where the immovable property is located at the time that the *MCD regulated mortgage contract* is entered into; or

...

...

10A.3.2 G ~~Articles 17(1) to (5), (7) and (8) and Annex I of the MCD, which MCOB 10A transpose, are subject to maximum harmonisation. [deleted]~~  
 [~~Note: article 2(2) of the MCD]~~

...

**14 MCD article 3(1)(b) credit agreements****14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements**

...

14.1.8 G *CONC* 1.2.10R(1)(a) relates to high net worth borrowers; the purpose of *MCOB* 14.1.7R is to enable a high net worth borrower under an *MCD article 3(1)(b) credit agreement* to waive the protections and remedies applicable to *regulated credit agreements*, except for those that ~~implement~~ implemented the *MCD*.

...

## Annex D

### Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Application

### 1.1 General application

...

1.1.4 R ...

- (3) ~~A firm will not be subject to BCOBS to the extent that it would be contrary to the United Kingdom's obligations under an EU instrument. [deleted]~~

...

## 3 Distance communications

### 3.1 Distance marketing

Application

3.1.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* ~~or another EEA State~~.

...

Contracts governed by law of a third party state

3.1.17 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~~ United Kingdom, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this chapter if the *distance contract* has a close link with the ~~territory of one or more EEA States~~ United Kingdom.

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

### 3.2 E Commerce

Application

3.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* ~~or another EEA State~~.

## Information about the firm and its products or services

- 3.2.2 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:

...

- (5) if it is a *professional firm*, or a person regulated by the equivalent of a designated professional body in another EEA State:

...

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

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

...

- 3.2.5 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*]

### 3 Annex Distance marketing information 1R

This Annex belongs to *BCOBS* 3.1.2R (The distance marketing disclosure rules)

Information about the firm	
...	
(2)	Where the <i>firm</i> has a representative established in the <del>consumer's EEA State of residence</del> <u>United Kingdom</u> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
...	
Information about the contract	

...	
(16)	<del>The EEA State or States whose laws are taken by the firm as a basis for the establishment of relations with the consumer prior to the conclusion of the contract. [deleted]</del>
...	

...

#### 4 Information to be communicated to banking customers

...

##### 4.3 Information to be provided by a non ring-fenced body to individual account holders

...

- 4.3.3 G A *non ring-fenced body* is a *firm* which has a *Part 4A permission* to carry on the *regulated activity* of *accepting deposits* and which is neither a *ring-fenced body* nor an institution which is exempt from the definition of a *ring-fenced body*. Section 142A(1) of the *Act* defines a *ring-fenced body* as a UK institution which carries out one or more core activities under section 142B of the *Act* for which it has a *Part 4A permission*. Section 142A(2) of the *Act* and the Ring-fenced Bodies and Core Activities Order 2014 provide that a *building society* and certain other classes of UK institution are exempt from this definition. Further, *firms* do not fall within the definition unless they hold *deposits* in *UK accounts* or *EEA accounts*.

To whom must information be provided?

- 4.3.4 R (1) ...
- (2) A *firm* that is a *non ring-fenced body* must provide the information specified in *BCOBS* 4.3.6R to:
- (a) any individual that has applied to open a *UK account* or an *EEA account* for the purpose of making one or more *deposits* (including a joint account) with that *firm*; and
- (b) any individual who holds a *UK account* or an *EEA account* for that purpose (including a joint account) with that *firm*,

except where the *firm* has already provided that information to the individual on a previous occasion.

- 4.3.5 G A request made by an individual to switch to a *UK account* or an *EEA account* with a *firm* is to be regarded as an application to open a *UK account* or an *EEA account* with that *firm* (it is immaterial if the switch is from an account held with a *ring-fenced body* in the same group as the

*firm* or whether the existing account will be closed when the switch is complete).

...

### TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provisions applies		Transitional provision	Transitional provisions: dates in force	Handbook provisions: coming into force
...					
8	<i>BCOBS</i> 5.1.10BG	R	A <i>firm</i> need not have regard to the guidance referred to in column (2) in interpreting and applying <i>BCOBS</i> 5.1.10AR until <del>18 months after the date on which the regulatory technical standards adopted under article 98 of the Payment Services Directive come into force</del> <u>14 September 2019</u> .	13 January 2018 until <del>the date specified in column (4)</del> <u>14 September 2019</u>	13 January 2018
...					

## Annex E

## Amendments to the Claims Management: Conduct of Business sourcebook (CMCOB)

Comes into force on 1 April 2019, immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force or on exit day as defined in the European Union (Withdrawal) Act 2018, whichever date is the later.

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Conduct of business

...

### 2.2 Generating, obtaining and passing on leads

...

#### 2.2.3 G ... ..

- (4) *Firms* are reminded that, under *data protection legislation*, they must have consent from the *customer* to process the *customer's* personal data, for example to contact the *customer* or to pass their details on to a third party, unless one of the other conditions which renders the processing of that data lawful is satisfied. In this context, the *FCA* would normally expect *firms* to obtain consent and would only expect *firms* to be able to rely on the legitimate interests condition (under article 6(1)(f) ~~of the General Data Protection Regulation (EU) No 2016/679~~ General data protection regulation very occasionally. Where the *firm* relies on consent which has been obtained by a *lead generator*, the *firm* should satisfy itself that the consent was properly obtained, and clearly covers both the *firm* and the use that the *firm* intends to make of the *customer's* personal data. In relation to consent, *firms* are also reminded of the requirements in article 7(2) of the ~~General Data Protection Regulation (EU) No 2016/679~~ General data protection regulation.

## Annex F

### Amendments to the Client Assets sourcebook (CASS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application and general provisions

...

#### 1.2 General application: who? what?

...

1.2.3 R CASS does not apply to: an ICVC.

(1) ~~an ICVC; or~~

(2) ~~an incoming EEA firm other than an insurer, with respect to its passported activities; or~~

(3) ~~a UCITS qualifier.~~

...

#### 1.3 General application: where?

...

~~UK firms: passported activities from EEA branches~~

1.3.3 R ~~CASS applies to every UK firm, other than an insurer, in relation to passported activities carried on by it from a branch in another EEA State.~~  
[deleted]

1.3.4 R ~~CASS does not apply to an incoming ECA provider acting as such.~~  
[deleted]

...

#### 3 Collateral

##### 3.1 Application and Purpose

...

3.1.2 R ~~Firms are reminded that this chapter does not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The~~ the application of this chapter is also dependent on the location from which the activity is undertaken (see CASS 1.3.2R and CASS 1.3.3R).



...

## 5 Client money: insurance distribution activity

...

### 5.5 Segregation and the operation of client money accounts

...

- 5.5.46 G A *firm* will be expected to perform due diligence when opening a *client bank account* with a bank that is authorised ~~by an EEA regulator~~ in the United Kingdom. Any continuing assessment of that bank may be restricted to verification that it remains authorised ~~by an EEA regulator~~ in the United Kingdom.

...

### 5.6 Client money distribution

#### Application

...

- 5.6.2 G (1) The *client money (insurance) distribution rules* have force and effect on any *firm* that holds *client money* in accordance with CASS 5.3 or CASS 5.4. Therefore, they may apply to a *UK branch* of ~~a non-EEA firm~~ an overseas firm. In this case, the *UK branch* of the *firm* may be treated as if the *branch* itself is a free-standing entity subject to the *client money (insurance) distribution rules*.

...

## 6 Custody rules

### 6.1 Application

...

- 6.1.24 G The *custody rules* also, where relevant, ~~implement~~ implemented the provisions of *MiFID* which ~~regulate~~ regulated the obligations of a *firm* when it ~~holds~~ held *financial instruments* belonging to a *client* in the course of its *MiFID business*.

...

## 7 Client money rules

...

### 7.11 Treatment of client money

...

- 7.11.15 G ~~The exclusion from the *client money rules* for delivery versus payment transactions under CASS 7.11.14R is an example of an exclusion from the *client money rules* which is permissible by virtue of recital 51 to MiFID. [deleted]~~

...

## 8 Mandates

### 8.1 Application

...

- 8.1.3 G ~~*Firms* are reminded that the *mandate rules* do not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passport activities*. The application of the *mandate rules* is also dependent on the location from which the activity is undertaken (see CASS 1.3). [deleted]~~

...

## 10 CASS resolution pack

### 10.1 Application, purpose and general provisions

...

#### Purpose

- 10.1.2 G The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would:
- (1) ...
  - (2) in the event of its or another *firm's* resolution, assist the Bank of England ~~in its capacity as resolution authority under the RRD~~; and
  - (3) ...

...

## Annex G

### Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Market Abuse

##### 1.1 Application and interpretation

...

1.1.6 G This chapter does not exhaustively describe all types of behaviour that may indicate *market abuse*. In particular, the descriptions of behaviour should be read in the light of:

...

- (3) any provisions ~~specified in any Commission legislative text made pursuant to the *Market Abuse Regulation*~~ in the *MAR Level 2 Regulations*, and any applicable guidelines made by *ESMA* in force before *exit day*.

...

1.1.9 G References are made in this chapter to provisions in the *Market Abuse Regulation* and ~~other *EU* legislation made pursuant to the *Market Abuse Regulation*~~ provisions in the *MAR Level 2 Regulations* to assist readers. The fact that other provisions of the *Market Abuse Regulation* and other ~~*EU*~~ legislation made pursuant to the *Market Abuse Regulation* provisions in the *MAR Level 2 Regulations* have not been referred to does not mean that they would not also assist readers or that they have a different status.

...

##### 1.2 Market Abuse: general

...

1.2.2-A ~~EU~~ UK [article 2, article 14 and article 15 of the *Market Abuse Regulation*]

...

1.2.7-A ~~EU~~ UK [article 8(4) of the *Market Abuse Regulation*]

...

Inside information: factors to be taken into account

1.2.10A EU [article 7 of the *Market Abuse Regulation*]  
UK

...

1.2.15B EU [article 7(1)(d) of the *Market Abuse Regulation*]  
UK

...

Inside information: commodity derivatives

1.2.18A EU [article 7(1)(b) of the *Market Abuse Regulation*]  
UK

...

1.2.19A G *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.

[~~Note: the guidelines are available at <https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>. ESMA guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN)~~]

...

### 1.3 Insider dealing

...

1.3.1A EU [article 8 of the *Market Abuse Regulation*]  
UK

...

1.3.23 G The following connected descriptions are intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concern the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.

- (1) A person deals, on a *trading venue*, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
- (2) A person deals, in a commodity futures contract traded on a *trading venue*, based on the same information, provided that the information is reasonably expected to be disclosed or is required to be disclosed

in accordance with legal or regulatory provisions at the national, *EU* or ~~national~~ Member State level, market rules, contract, practice or custom, on the relevant commodity futures market.

- 1.3.24 G *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.

[~~Note: the guidelines are available at~~  
<https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives> ESMA guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN).]

## 1.4 Unlawful disclosure

...

- 1.4.1A ~~EU~~ [article 10 of the *Market Abuse Regulation*]  
UK

...

## 1.6 Manipulating transactions

...

- 1.6.1-A ~~EU~~ [article 12(1)(b) of the *Market Abuse Regulation*]  
UK

...

## 1.7 Manipulating devices

...

- 1.7.1-A ~~EU~~ [article 12(1)(b) of the *Market Abuse Regulation*]  
UK

...

## 1.8 Dissemination

...

- 1.8.1A ~~EU~~ [article 12(1)(c) of the *Market Abuse Regulation*]  
UK

...

## 1.9 Misleading behaviour & distortion

...

1.9.1-A ~~EU~~ [article 12(1)(c) of the *Market Abuse Regulation*]  
UK

...

## 1.10 Statutory exceptions

Behaviour that does not amount to market abuse

1.10.1 G (1) *Behaviour* which conforms with article 5 of the *Market Abuse Regulation* or with a ~~directly applicable EU regulation made under article 5 of the *Market Abuse Regulation*~~ the *Buy-back and Stabilisation Regulation* will not amount to *market abuse*.

...

...

## 1 Annex Accepted Market Practices 2

~~EU~~ [article 13 of the *Market Abuse Regulation*]  
UK

...

## 4 Support of the Takeover Panel's Functions

...

### 4.4 Exceptions

4.4.1 R This chapter is subject to the following exceptions:

...

(4) ~~this chapter does not apply to:~~

(a) ~~a UCITS qualifier; or~~

(b) ~~an incoming EEA firm which has permission only for cross border services and which does not carry on regulated activities in the United Kingdom. [deleted]~~

...

## 5 Multilateral trading facilities (MTFs)

...

**5.3A Systems and controls for algorithmic trading**

...

- 5.3A.8 R A *firm* must have systems and procedures to notify the *FCA* if:
- (1) an *MTF* operated by the *firm* is material in terms of the liquidity of trading of a *financial instrument* ~~in the EEA~~; and

...

Direct electronic access

- 5.3A.9 R A *firm* which permits *direct electronic access* to an *MTF* it operates must:
- (1) not permit members or participants of the *MTF* to provide such services unless they are:
    - (a) *MiFID* investment firms authorised under *MiFID*; or
    - ...
    - (g) *firms* that come within article 2.1(a), (e), (i), or (j) of *MiFID* regulation 30(1A) of the *MiFI Regulations* and have a Part 4A permission relating to investment services or activities;

...

...

- 5.3A.14 R A *firm* must adopt tick size regimes in:
- ...
  - (2) any other *financial instrument* which is traded on that *trading venue*, as required by a regulatory technical standard made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

...

...

- 5.3A.16 G Nothing in *MAR* 5.3A.14R or *MAR* 5.3A.15R requires a *firm* to act inconsistently with *MiFID RTS 11* or any regulatory technical standards made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

...

...

5.3A.18 G For the purpose of *MAR* 5.3A.17R, ~~the regulatory technical standards made under article 50 of *MiFID*~~ *MiFID RTS 25* ~~provide~~ provides further requirements.

...

## 5.7 Pre- and post-trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

...

5.7.1B G ~~According to article 4(7) of *MiFIR*, waivers granted by competent authorities in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by *ESMA* by 3 January 2020. *ESMA* shall issue an opinion to the competent authority, assessing the continued compatibility of those waivers with the requirements established in *MiFIR* and any regulations made pursuant to it. The *FCA* will cooperate with *ESMA* in relation to the continued effect of existing waivers.~~ [deleted]

...

## 5A Organised trading facilities (OTFs)

...

### 5A.3 Specific requirements for OTFs

...

5A.3.2 R The discretion which the *firm* must exercise in executing a *client* order must be either, or both, of the following:

...

- (2) the second discretion is whether to match a specific *client* order with other orders available on the *OTF* at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the *client* and in accordance with the *firm's* obligations under ~~article 27 of *MiFID*~~ *COBS* 11.2A (Best execution – *MiFID* provisions).

...

...

## 5A.5 Systems and controls for algorithmic trading

...



- 5A.5.8 R A *firm* must have systems and procedures to notify the *FCA* if:
- (1) an *OTF* operated by it is material in terms of the liquidity of trading of a *financial instrument* ~~in the EEA~~; and

...

Direct electronic access

- 5A.5.9 R A *firm* which permits *direct electronic access* to an *OTF* it operates must:

- (1) not permit members or participants of the *OTF* to provide such services unless they are:
- (a) *MiFID* investment firms authorised under *MiFID*; or
- ...
- (g) *firms* that come within ~~article 2.1(a), (e), (i), or (j) of *MiFID*~~ regulation 30(1A) of the *MiFI Regulations* and have a *Part 4A permission* relating to *investment services or activities*;

...

...

- 5A.5.14 R The *firm* must adopt tick size regimes for *financial instruments* as required by a regulatory technical standard made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

...

...

- 5A.5.16 G Nothing in *MAR* 5A.5.14R or *MAR* 5A.5.15R requires a *firm* to act inconsistently with any regulatory technical standards made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

...

...

- 5A.5.18 R For the purpose of *MAR* 5A.5.17R, ~~the regulatory technical standards made under article 50 of *MiFID*~~ *MiFID RTS 25* ~~provide~~ provides further requirements.

...

## 7A Algorithmic trading

...

### 7A.3 Requirements for algorithmic trading

...

#### Notifications

- 7A.3.6 R A *firm* which is a member or participant of a *trading venue* must immediately notify the following FCA if it is engaging in *algorithmic trading in the UK or in an EEA State*:
- (1) ~~the FCA; and~~
  - (2) ~~any competent authority of a trading venue in another EEA State where the firm engages in algorithmic trading.~~

...

...

### 7A.4 Requirements when providing direct electronic access

...

#### Notifications

- 7A.4.4 R A *firm* must immediately notify the following FCA if it is providing *DEA services*:
- (1) ~~the FCA; and~~
  - (2) ~~the competent authority of an trading venue in the EEA to which the firm provides DEA services.~~

...

...

## 8 Benchmarks

### 8.1 Application and purpose

...

#### Purpose

- 8.1.2 G The purpose of this chapter is to set out the requirements that apply to *firms* involved in the provision of, or contribution to, benchmarks, as follows:
- (1) *MAR 8.4* (Third country benchmark contributors) sets out the requirements that apply to *third country benchmark contributors* that are not *supervised entities*, but would be if they were located in the ~~EU~~ UK. These *rules* apply requirements mirroring those which apply

to *benchmark contributors* that are in scope of the *benchmarks regulation*.

...

...

## 8.4 Third country benchmark contributors

Application

- 8.4.1 R (1) Subject to (2), this section applies to a *third country benchmark contributor* that:
- (a) is not a *supervised entity*; and
  - (b) would be a *supervised entity* if it were located in the ~~EU~~ UK.

...

## 8.5 Regulated benchmark administrators

...

Notifications about suspected benchmark manipulation

- 8.5.7 G ...
- (2) Article 14(1) of the *benchmarks regulation* requires a *regulated benchmark administrator* to establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to ~~its competent authority~~ the FCA any conduct that may involve manipulation or attempted manipulation of a benchmark, under the *Market Abuse Regulation*.

...

...

## 8.7 Procedures for exercising powers in relation to critical benchmarks

...

Compulsion powers under the benchmarks regulation

- 8.7.3 G ...
- (2) The *benchmarks regulation* confers various directly applicable powers on ~~competent authorities~~ the FCA in relation to *critical benchmarks*. In particular:
- (a) article 21(3) of the *benchmarks regulation* gives ~~a competent authority~~ the FCA the power to compel the administrator of a

*critical benchmark* to continue publishing the *critical benchmark* for up to 24 months; and

- (b) article 23(6) of the *benchmarks regulation* gives ~~a competent authority~~ the FCA the power to take various steps where it considers that the representativeness of a *critical benchmark* is put at risk. That includes the power to require *supervised entities* to *contribute input data* to the administrator of a *critical benchmark* for up to 24 months.

...

Exercise of compulsion powers: general

- 8.7.4 G (1) Articles 21 and 23 of the *benchmarks regulation* set out the circumstances in which ~~competent authorities~~ the FCA may exercise the compulsion powers.
- (2) In some cases, the ~~competent authority~~ FCA may only have a short period in which to decide whether to exercise a compulsion power.
- ...
- (4) The *benchmarks regulation* does not require ~~a competent authority~~ the FCA to consult on the use of compulsion powers (~~save that competent authorities must consult the college established under article 46 of the benchmarks regulation when exercising the compulsion power in article 23~~).

...

...

## 9 Data reporting service

### 9.1 Application, introduction, approach and structure

Application

- 9.1.1 G This chapter applies to:
- ...
- (2) A ~~UK~~ UK branch of a *third country person* seeking authorisation to provide a *data reporting service*;
- (3) a ~~UK~~ UK *MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(b) or (c) of the *DRS Regulations*;

...

## Introduction

- 9.1.2 G The original purpose of this chapter was to implement Title V of *MiFID* which sets out harmonised market data services authorisation and supervision requirements. These are designed to ensure a necessary level of quality of trading activity information across ~~EU~~ financial markets for users, and for ~~competent authorities~~ the regulator to receive accurate and comprehensive information on relevant transactions. These requirements provide for:

...

Approach to ~~transposition~~ onshoring

- 9.1.3 G The market data services authorisation and supervision requirements in Title V of *MiFID* are ~~implemented in the UK~~ onshored through a combination of:

(1) ...

- (b) the *MiFI Regulations* which set out additional provisions addressing requirements imposed by *MiFIR* and ~~EU regulations~~ onshored regulations;

...

- (3) ~~EU regulations~~ onshored regulations including:

...

- 9.1.3A G See M2G for further guidance on how the measures referred to in MAR 9.1.3G have been amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 and FCA instruments made pursuant to the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

...

**9.2 Authorisation and verification**

## Application form and notification form for members of the management body

- 9.2.1 D (1) Each of the following must complete the forms in (2):

...

- (b) a ~~UK~~ *MiFID investment firm* operating a trading venue seeking verification of its rights to provide a *data reporting service* under regulation 5(b) and (c) of the *DRS Regulations*; and

...

...

...

## 9.5 Frequently Asked Questions

9.5.1 G ~~Q. — Are there any grandfathering arrangements for ARMs or trade data monitors operating prior to MiFID?~~

~~A. — No. Persons wishing to provide a data reporting service must apply to be authorised as a data reporting services provider. [deleted]~~

9.5.2 G Q. We are a trading venue operator. Can you please clarify how we can provide a data reporting service under the derogation from needing authorisation in ~~article 59(2) of MiFID~~ regulation 5(b) to (d) of the DRS Regulations?

A.

- (1) The derogation (or exception) in article 59(2) of *MiFID* ~~allows~~ allowed Member States to allow a trading venue operator to provide a data reporting service without prior authorisation, if the operator ~~has verified that they comply~~ complied with Title V of *MiFID*.
- (2) The *United Kingdom* ~~has~~ adopted this derogation in regulation 5(b) to (d) of the *DRS Regulations*.

...

...

9.5.6 G Q. Does an investment firm need to be authorised as an ARM to send transaction reports to the FCA?

A. No. If you are a *MiFID* investment firm that wishes to send transaction reports to us to satisfy your own transaction reporting obligations under *MiFIR* or a third country investment firm subject to a similar obligation pursuant to GEN 2.2.22AR, you do not need to become authorised as an ARM. You are permitted to connect directly to us although there will be a requirement to sign a *MIS confidentiality agreement* with us, to satisfy connectivity requirements and to undertake testing associated with connecting to our systems. For the associated costs please see *FEES* 3.2.7R for relevant on-boarding costs. If you want to connect to us to send reports on behalf of other investment firms then you must become authorised as an ARM.

9.5.7 G Q. Where can I find a list of data reporting services providers?

A. ~~Article 59(3) of MiFID requires ESMA to establish a list of all data reporting services providers. Further, regulation~~ Regulation 6 of the DRS Regulations requires the FCA to maintain a register of data reporting services providers.

...

## 10 Commodity derivative position limits and controls, and position reporting

### 10.1 Application

#### Introduction

10.1.1 G ...

(2) In particular, this chapter sets out the *FCA*'s requirements in respect of provisions derived from:

(a) articles 57(1) and 57(6) of *MiFID*, which require ~~it competent authorities or central competent authorities~~ to establish limits, on the basis of a methodology determined by *ESMA*, on the size of a net position which a *person* can hold, together with those held on the *person*'s behalf at an aggregate group level, at all times, in *commodity derivatives* traded on *trading venues* and *economically equivalent OTC contracts* to those *commodity derivatives*;

...

(d) article 58(2) of *MiFID*, which requires *investment firms* trading in *commodity derivatives* or *emission allowances* outside a *trading venue* to provide the ~~competent authority or central competent authority~~ with reports containing a complete breakdown of their positions held through such contracts traded on a *trading venue* and *economically equivalent OTC contracts*, as well as of those of their *clients* and the clients of those clients until the end client is reached.

...

#### Scope and territoriality

10.1.2 G ...

(2) In respect of position management controls requirements:

(a) the requirements contained or referred to in *MAR* 10.3 apply to *persons* operating a *trading venue* which trades *commodity derivatives* in respect of which the *FCA* is the ~~Home State~~ *competent authority*; and

...

(3) In respect of position reporting requirements:

(a) the position reporting requirements in *MAR* 10.4 apply to:

- (i) a ~~UK~~ regulated market; and

...

...

## 10.2 Position limit requirements

Establishing, applying and resetting position limits

- 10.2.1 G (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:

...

- (h) ~~Regulation 20(2) imposes an obligation on the FCA, where it receives an ESMA opinion stating that the establishment of a position limit would be, or is, incompatible with that opinion, to modify the position limit in accordance with ESMA's opinion or to notify ESMA as to why amendment to the limit is considered to be unnecessary; [deleted]~~

- (i) ~~Regulation 21(1) imposes an obligation on the FCA to not establish a position limit in respect of a commodity derivative traded on trading venues in the United Kingdom, where there is a central competent authority for that commodity derivative other than the FCA; [deleted]~~

...

- (k) Regulation 25(1) prohibits the FCA from establishing position limits which are more restrictive than permitted under ~~ESMA's methodology~~ *MiFID RTS 21*, unless in exceptional cases where more restrictive position limits are objectively justified and proportionate;

- (l) Regulation 25(2) to Regulation 25(5) impose obligations on the FCA where it establishes position limits which are more restrictive than permitted under ~~ESMA's methodology~~ *MiFID RTS 21* in accordance with Regulation 25(1) of the *MiFI Regulations*. The obligations are that the FCA must publish that position limit on its website, and not apply that position limit for more than six *months* from the date of publication unless further subsequent six-month application periods for that limit are objectively justified and proportionate, ~~and must notify ESMA of the position limit and the justification for establishing it; and~~



- (m) ~~Regulation 20(5) and Regulation 25(6) impose obligations on the FCA to publish a notice on its website explaining the reasons for its decision when, under Regulation 20(2) and Regulation 25(5) of the MiFI Regulations respectively, it does not modify a position limit following an ESMA opinion incompatible with the limit; and [deleted]~~

...

...

#### Application of position limits

10.2.2 D ...

- (2) A direction made under (1) applies where a *commodity derivative* is traded on a *trading venue* in the *United Kingdom*, ~~provided that there is not a *central competent authority* established in an *EEA State* other than the *United Kingdom*.~~

...

...

10.2.5 G ~~Where a position limit is established by a *competent authority* or *central competent authority* other than the *FCA*, a *non-financial entity* should submit its application for exemption, in relation to the position limit, to that *competent authority* or *central competent authority* in the manner it specifies. [deleted]~~

~~[Note: article 8 of MiFID RTS 21]~~

...

## 10.4 Position reporting

### Application

10.4.1 G The application of this section is set out in the following table:

Type of firm	Applicable provisions
<del>UK regulated market</del> <i>Regulated market</i>	MAR 10.4.2G
...	
<del>UK MiFID investment</del> <i>firm</i>	MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G
...	

<del>EEA MiFID investment firm who is a member, participant or a client of a UK trading venue</del>	MAR 10.4.10D to MAR 10.4.11G
---	------------------------------

...

## Position reporting by UK regulated markets

- 10.4.2 G A ~~UK~~ regulated market which trades *commodity derivatives* or *emission allowances* must provide position reports in accordance with paragraph 7BB of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[Note: article 58(1) of *MiFID*]

## Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: Reports

- 10.4.3 R ...

- (2) A firm must make public and provide to the *FCA* and ~~*ESMA*~~ a weekly report with the aggregate positions held by the different categories of *persons* for the different *commodity derivatives* or *emission allowances* traded on the *trading venue*, where those instruments meet the criteria of article 83 of the *MiFID Org Regulation*, specifying:

...

...

[Note: article 58(1) of *MiFID*, *MiFID ITS 4* on position reporting and *MiFID ITS 5* on the format and timing of weekly position reports to ~~*ESMA*~~]

## Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Procedure for reporting to the FCA

- 10.4.5 D ...

- (2) A firm shall report to the *FCA*:
- (a) (where it meets the minimum threshold as specified in article 83 of the *MiFID Org Regulation*) the weekly report referred to in MAR 10.4.3R(2), by using the form set out in Annex I of *MiFID ITS 4*, and publish it on its website and provide the report to ~~*ESMA*~~; and

...

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Duplication of reporting

- 10.4.6 G For the purposes of making the weekly report referred to under *MAR* 10.4.3R(2), the *FCA* will accept an email containing a link to the report, as published on the *firm's* website. Emails should be sent to the *FCA* at *COT\_reports@fca.org.uk*. ~~This guidance does not affect the separate obligation for a firm to make the weekly report to ESMA.~~

Position reporting by members, participants or clients of UK trading venues: trading venue participant reporting

- 10.4.7 D ...
- (3) ~~Paragraph (2) above does not apply to a member, participant or a client of a trading venue that is an EEA person. [deleted]~~

...

~~UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to the FCA~~

- 10.4.8 D (1) This direction applies to:
- (a) a *UK MiFID investment firm*; and

...

...

~~UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to EEA competent authorities other than the FCA~~

- 10.4.9 D (1) ~~This direction applies to:~~
- (a) a *UK MiFID investment firm*; and
- (b) a *UK branch of a third country investment firm*.
- (2) ~~An investment firm in (1) trading in a commodity derivative or emission allowance outside a trading venue must, where an EEA competent authority other than the FCA is the competent authority of the trading venue where that commodity derivative or emission allowance is traded, or the central competent authority for the purposes of that commodity derivative, provide that EEA competent authority with a report containing a complete breakdown of:~~
- (a) ~~their positions taken in those commodity derivatives or emission allowances traded on a trading venue;~~
- (b) ~~economically equivalent OTC contracts; and~~

(e) ~~the positions of their clients and the clients of those clients until the end client is reached, in accordance with article 26 of *MiFIR*.~~

(3) ~~The report in (2) must be submitted to the relevant *EEA competent authority*, for each *business day*, using the form set out in Annex II of *MiFID-ITS 4*, by the time specified by that *EEA competent authority*.~~

(4) ~~The obligation in (2) does not apply where the *FCA* is the *central competent authority* for that *commodity derivative*. [deleted]~~

[**Note:** 58(2) of *MiFID*, and *MiFID-ITS 4* on position reporting]

~~EEA MiFID investment firms who are members, participants or clients of UK trading venues: trading venue participant reporting and OTC reporting to the FCA~~

- 10.4.10 D (1) ~~This direction applies to an *EEA MiFID investment firm* which is a member, participant or a *client* of a *UK trading venue*.~~
- (2) ~~*MAR 10.4.7D* applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*.~~
- (3) ~~*MAR 10.4.8D* applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*, where the *EEA MiFID investment firm* trades in a *commodity derivative* or *emission allowance* outside a *trading venue*, and the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, or the *central competent authority* for the purposes of that *commodity derivative*.~~
- (4) ~~Paragraphs (2) and (3) above only apply where the *EEA MiFID investment firm* is not subject to a corresponding rule or other requirement imposed by its *Home State competent authority*. [deleted]~~
- 10.4.11 G (1) This guidance applies to persons subject to *MAR 10.4.8D(2)* ~~or *MAR 10.4.10D(3)*~~.
- (2) A firm subject to *MAR 10.4.8D(2)* ~~or *MAR 10.4.10D(3)*~~ may use a third party technology provider to submit to the *FCA* the report referred to in *MAR 10.4.8D(2)* provided that it does so in a manner consistent with *MiFID*. It will retain responsibility for the completeness, accuracy and timely submission of the report and should populate field 5 of *MiFID ITS 4* Annex II with its own reporting entity identification. It should be the applicant for, and should complete and sign, the *FCA MDP on-boarding application form*.

...

- (4) A *firm* subject to MAR 10.4.8D(2) ~~or MAR 10.4.10D(3)~~ may arrange for the *trading venue* where that *commodity derivative* or *emission allowance* is traded to provide the *FCA* with the report provided that it does so in a manner consistent with *MiFID*. The *firm* will retain responsibility for the completeness, accuracy and timely submission of the report, submitted on its behalf. The *firm* should populate field 5 of *MiFID ITS 4 Annex II* with its own reporting entity identification.

## 10.5 Other reporting, notifications and information requirements

...

### Power to intervene

- 10.5.2 G The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to intervene in respect of position limits:
- (1) Regulation 28 provides that the *FCA* may, if it considers necessary, limit the ability of any *person* to enter into a contract for a *commodity derivative*, restrict the size of positions a *person* may hold in such a contract, or require any *person* to reduce the size of a position held, notwithstanding that the restriction or reduction would be more restrictive than the position limit established by the *FCA* ~~or another competent authority~~ in accordance with article 57 of *MiFID* to which the contract relates; and

...

...

### Breaches of MAR 10 by unauthorised persons

- 10.5.4 G (1)
- ...
- (b) a breach of a directly applicable provision imposed by *MiFIR* or any ~~EU regulation~~ onshored regulation adopted under *MiFID* or *MiFIR*; and

...

### Breaches of MAR 10 by authorised persons

- 10.5.6 G ...
- (2) a breach of a directly applicable provision imposed by *MiFIR* or ~~EU regulation~~ onshored regulation adopted under *MiFID* or *MiFIR*; and

...

#### Territoriality

- 10.5.7 G The powers of the *FCA* referred to in *MAR* 10.5.1G to *MAR* 10.5.3G can be applied to a *person* regardless of whether the *person* is situated or operating in the *UK* or abroad, where the relevant position relates to a *commodity derivative* or *emission allowance* ~~of~~ for which the *FCA* is ~~the competent authority or central competent authority~~ responsible for setting a position limit, or *economically equivalent OTC contracts*.

...

## Annex H

## Amendments to the Product Intervention and Product Governance sourcebook (PROD)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Product Intervention and Product Governance Sourcebook (PROD)

...

### 1.3 Application of PROD 3

...

~~EEA territorial scope rule: compatibility with European law~~

- 1.3.6 R (1) ~~The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see PROD 1.3.7G to PROD 1.3.10G for guidance on this).~~
- (2) ~~This rule overrides every other rule in this sourcebook. [deleted]~~

~~Effects of the EEA territorial scope rule~~

- 1.3.7 G ~~One of the effects of PROD 1.3.6R is the override the application of this sourcebook to the overseas establishments of EEA firms in circumstances covered by MiFID. [deleted]~~
- 1.3.8 G ~~The guidance in this chapter provides a general overview only and is not comprehensive. [deleted]~~
- 1.3.9 G ~~When considering the impact of a directive on the territorial application of a rule, a firm will first need to consider whether the relevant situation involves a non-UK element. PROD 1.3.6R 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 UK product, in other words PROD 3 will apply to the UK firm. However, if there is a non-UK element, the firm should consider whether:~~
- (1) ~~It is subject to the directive (in general, directives only apply to UK firms and EEA firms, but the implementing provisions may not treat non-EEA firms more favourably than EEA firms);~~
- (2) ~~the business it is performing is subject to the directive; and~~
- (3) ~~the particular rule is within the scope of the directive.~~
- ~~If the answer to all three questions is 'yes', PROD 1.3.6R may change the application of the rules in this sourcebook. [deleted]~~
- 1.3.10 G ~~When considering a particular situation, a firm should also consider whether two or more directives apply. [deleted]~~

~~MiFID: effect on territorial scope~~

- 1.3.11 G *PERG 13 contains general guidance on the persons and businesses to which the UK provisions which implemented MiFID applies apply.*
- 1.3.12 G ~~For a UK MiFID investment firm, rules in this sourcebook that are within the scope of MiFID generally apply to its MiFID business carried on from an establishment in the United Kingdom. They also generally apply to its MiFID business carried on from an establishment in another EEA State, although in the case of rules that implement article 24(2) MiFID only where that business is not carried on within the territory of that EEA State. Where a MiFID investment firm carries on MiFID business from a branch in another EEA State, organisational requirements, including rules implementing product manufacture obligations under article 16 MiFID are home state requirements and therefore FCA responsibility (see SUP 13A Annex 1G). [deleted]~~
- ~~[Note: see articles 34(1) and 35(1) and (8) of MiFID]~~
- 1.3.13 G ~~For an EEA MiFID investment firm, rules in this sourcebook that are within the scope of MiFID generally apply only to its MiFID business if that business is carried on from an establishment in, and within the territory of, the United Kingdom and only to the extent that the rules implement article 24(2) of MiFID. [deleted]~~
- ~~[Note: see articles 35(1) and (8) of MiFID]~~

~~Electronic Commerce Directive: effect on territorial scope~~

- 1.3.14 G ~~The guidance on the Electronic Directive in COBS 1 Annex 1, Part 3, paragraph 7 applies equally in relation to the rules in PROD 3. [deleted]~~

...

**1.4 Application of PROD 4**

...

## When an intermediary may be considered to be manufacturing

- 1.4.4 EU UK 3(1) ~~For the purposes of Article 25(1) of Directive (EU) 2016/97 [PROD 4.2.1R, PROD 4.2.2R, PROD 4.2.29R, PROD 4.2.34R, PROD 4.3.1R and PROD 4.3.2R], insurance intermediaries shall be considered manufacturers where an overall analysis of their activity shows that they have a decision-making role in designing and developing an insurance product for the market.~~

...

~~[Note: article 3 of the IDD POG Regulation]~~

- 1.4.5 G The effect of PROD 1.4.3EU 1.4.4UK and PROD 1.4.6R is that an insurance intermediary needs to consider if it is manufacturing an insurance product



and, if so, should comply with *PROD* 4.2 (Manufacture of insurance products).

Effect of provisions marked “~~EU~~” “UK”

- 1.4.6 R (1) Subject to (2) and *PROD* 1.4.3R, provisions in this section and in *PROD* 4 marked “~~EU~~ UK” apply to *firms manufacturing or distributing* insurance products, but to whom the *IDD POG Regulation* does not apply, as if they were *rules*.
- (2) For the purposes of (1), a word or phrase used in the *IDD POG Regulation* and referred to in column (A) has the meaning indicated in Column (B) of the table below:

(a)	(b)
“ <del>Article 17(1) of Directive (EU) 2016/97</del> ”	<i>ICOBS 2.5. 1R, in relation to a non-investment insurance contract, or COBS 2.1.1R, in relation to a life policy</i>
“ <del>Article 25(1) of Directive (EU) 2016/97</del> ”	<i>PROD 4.2.1R and PROD 4.2.2R</i>
“Article 8(2)”	<i>PROD 4.2.30<del>EU</del><u>UK</u></i>
“ <del>competent authorities</del> ”	<i>FCA</i>
“customer” and “potential customer”	<i>Customer</i>
“ <del>Directive (EU) 2016/97</del> ”	<i>IDD</i>
“insurance-based investment products”	<i>insurance-based investment products</i>
“insurance distribution activities” and “distribution activities”	<i>insurance distribution activities</i>
“insurance distributor”	<i>Distributor</i>
“insurance intermediary”	<i>insurance intermediary</i>
“insurance undertaking”	<i>Insurer</i>
“manufacturer” and “manufacturers within the meaning of Article 2 of this Delegated Regulation”	<i>Manufacturer</i>
“manufacturing”	<i>Manufacturing</i>

“shall”	Must
---------	------

...

~~EEA territorial scope rule: compatibility with European law~~

- 1.4.8 R (1) ~~The territorial scope of *PROD 4* is modified to the extent necessary to be compatible with European law.~~
- (2) ~~This rule overrides every other rule in this sourcebook. [deleted]~~

~~Electronic Commerce Directive: effect on territorial scope~~

- 1.4.9 G ~~The rules and guidance on the *E-Commerce Directive* in *ICOBS 1 Annex 1*, Part 3, paragraph 1.2R and Part 4 paragraph 8, and in *COBS 1 Annex 1*, Part 2, paragraph 1.2R and Part 3, paragraph 7, apply equally in relation to the rules in *PROD 4*. [deleted]~~

...

## 1.5 Application of PROD 5

...

~~EEA territorial scope rules: compatibility with European law~~

- 1.5.4 R (1) ~~The territorial scope of *PROD 5* is modified to the extent necessary to make it compatible with European law (see *PROD 1.5.5G* to *PROD 1.5.7G* for guidance on this).~~
- (2) ~~This rule overrides every other rule in *PROD 5*. [deleted]~~

~~Effects of the EEA territorial scope rule~~

- 1.5.5 G ~~The guidance in paragraph 2 Part 4 of *ICOBS 1 Annex 1* applies equally to the rules in *PROD 5*. [deleted]~~

~~IDD, Solvency II, DMD: effect on territorial scope~~

- 1.5.6 G ~~The guidance on the *IDD*, *Solvency II* and *Distance Marketing Directive* in *ICOBS 1 Annex 1* in relation to *ICOBS 6A.1.4R* applies equally to *PROD 5.1.1R* (to the extent that the *extended warranty* is a *contract of insurance*). [deleted]~~

~~Electronic Commerce Directive: effect on territorial scope~~

- 1.5.7 G ~~The guidance on the *Electronic Commerce Directive* in *ICOBS 1 Annex 1*, Part 4, paragraph 8 applies equally in relation to *PROD 5*. [deleted]~~

...

## 2 Statement of policy with respect to the making of temporary product

## intervention rules

...

### 2.6 General considerations for product intervention rules

...

- 2.6.2 G The *FCA* will also take into account general considerations that include, but are not limited to, whether the proposed *rules* are:

...

- (7) compatible (where relevant) with other applicable law, ~~for example~~ *EU* law.

...

## 3 Product governance: MiFID

### 3.1 General

[Note: ESMA has also issued guidelines under article 16(1) of the ESMA Regulation covering: “MiFID II product governance requirements”, dated 5 February 2018. See [https://www.esma.europa.eu/sites/default/files/library/esma35-43-620\\_guidelines\\_on\\_mifid\\_ii\\_product\\_governance\\_requirements\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-620_guidelines_on_mifid_ii_product_governance_requirements_0.pdf).]; Guidelines on MiFID II product governance requirements, 05/02/2018, ESMA35-43-620]

...

### 3.2 Manufacture of products

...

- 3.2.24 R When a crucial event affecting the potential risk or return expectation of the *financial instrument* occurs, a *manufacturer* must take appropriate action, which may consist of:

...

- (8) informing the ~~relevant competent authority~~ *FCA*.

...

- 3.2.36 R *Manufacturers* must make the compliance reports available to ~~their~~ *competent authority* the FCA on request.

[**Note:** article 9(6) *MiFID Delegated Directive*]

...

### 3.3 Distribution of products and investment services

...

Obtaining information from manufacturers

- 3.3.3 R *Distributors* must obtain from ~~MiFID~~ *manufacturers* subject to PROD 3.2 information to gain the necessary understanding and knowledge of the *financial instruments* they intend to *distribute* in order to ensure that the *financial instruments* will be *distributed* in accordance with the needs, characteristics and objectives of the target market.

[**Note:** article 16(3) *MiFID* and article 10(2) *MiFID Delegated Directive*]

...

Distributing financial instruments manufactured by ~~non-MiFID~~ firms to whom PROD 3.2 does not apply, including third country firms

- 3.3.5 R (1) *Distributors* must take all reasonable steps to comply with *PROD 3.3* when *distributing financial instruments manufactured* by any *firm* to which ~~MiFID manufacturer~~ product governance requirements in (~~PROD 3.2 or equivalent requirements of another EEA State~~) do not apply.

...

- 3.3.25 R A *distributor* shall make the compliance reports available to ~~competent authorities~~ the FCA on request.

[**Note:** article 10(8) of the *MiFID Delegated Directive*]

...

## 4 Product governance: IDD

...

### 4.2 Manufacture of insurance products

...

Product approval process

- 4.2.5 EU 4(1) ...  
UK

[**Note:** article 4(1) of the *IDD POG Regulation*]

- 4.2.6 EU 4(2) ...  
UK

[**Note:** article 4 (2) of the *IDD POG Regulation*]

4.2.7 EU 9 Relevant actions taken by manufacturers in relation to their product  
UK approval process shall be duly documented, kept for audit purposes  
and made available to the ~~competent authorities~~ Financial Conduct  
Authority upon request.

[**Note:** article 9 of the *IDD POG Regulation*]

4.2.8 EU 4(3) ...  
UK

[**Note:** article 4(3) of the *IDD POG Regulation*]

4.2.9 UK 4(4) ...

[**Note:** article 4(4) of the *IDD POG Regulation*]

4.2.10 EU 5(4) ...  
UK

[**Note:** article 5(4) of the *IDD POG Regulation*]

4.2.11 EU 4(5) ...  
UK

[**Note:** article 4(5) of the *IDD POG Regulation*]

4.2.12 EU 4(6) ...  
UK

[**Note:** article 4(6) of the *IDD POG Regulation*]

Manufacture by more than one firm

4.2.13 EU 3(4) An insurance intermediary and an insurance undertaking that are  
UK both manufacturers within the meaning of Article 2 of this  
Delegated Regulation, shall sign a written agreement which  
specifies their collaboration to comply with the requirements for  
manufacturers referred to in ~~Article 25(1) of Directive (EU) 2016/97~~  
[PROD 4.2.1R, PROD 4.2.2R, PROD 4.2.29R, PROD 4.2.33R and  
PROD 4.2.34R] the procedures through which they shall agree on  
the identification of the target market and their respective roles in  
the product approval process.

[**Note:** article 3(4) of the *IDD POG Regulation*]

4.2.14 R In circumstances other than *PROD 4.2.13*EUUK, when *firms* collaborate to  
*manufacture* an insurance product, they must outline their mutual  
responsibilities in a written agreement.

...

4.2.16 ~~EU~~  
UK 5(1) ...

[**Note:** article 5(1) of the *IDD POG Regulation*]

4.2.17 ~~EU~~  
UK 5(2) ...

[**Note:** article 5(2) of the *IDD POG Regulation*]

4.2.18 ~~EU~~  
UK 5(3) ...

[**Note:** article 5(3) of the *IDD POG Regulation*]

...

#### Product testing

4.2.22 ~~EU~~  
UK 6(1) ...

[**Note:** article 6(1) of the *IDD POG Regulation*]

4.2.23 G For the purposes of *PROD 4.2.22*~~EU~~UK, *manufacturers* should include assessments of the performance and risk/reward profile of their insurance product where appropriate.

[**Note:** recital 8 to the *IDD POG Regulation*]

4.2.24 ~~EU~~  
UK 6(2) ...

[**Note:** article 6(2) of the *IDD POG Regulation*]

...

#### Distribution channels and information disclosure to distributors

4.2.27 ~~EU~~  
UK 8(1) ...

[**Note:** article 8(1) of the *IDD POG Regulation*]

...

4.2.30 ~~EU~~  
UK 8(2) ...

[**Note:** article 8(2) of the *IDD POG Regulation*]

4.2.31	<del>EU</del> <u>UK</u>	8(3)	The information referred to in paragraph 2 shall enable the insurance distributors to:  ...  (d) carry out distribution activities for the relevant insurance products in accordance with the best interests of their customers as prescribed in <del>Article 17(1) of Directive (EU) 2016/97</del> <u>[ICOB 2.5-1R and COBS 2.1.1R]</u> .
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[**Note:** article 8(3) of the *IDD POG Regulation*]

...

4.2.35	<del>EU</del> <u>UK</u>	7(1)	...
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[**Note:** article 7(1) of the *IDD POG Regulation*]

4.2.36	<del>EU</del> <u>UK</u>	7(2)	...
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[**Note:** article 7(2) of the *IDD POG Regulation*]

4.2.37	<del>EU</del> <u>UK</u>	7(3)	...
--------	----------------------------	------	-----

[**Note:** article 7(3) of the *IDD POG Regulation*]

4.2.38	<del>EU</del> <u>UK</u>	8(4)	...
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[**Note:** article 8(4) of the *IDD POG Regulation*]

4.2.39	<del>EU</del> <u>UK</u>	8(5)	...
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[**Note:** article 8(5) of the *IDD POG Regulation*]

### 4.3 Distribution of insurance products

...

4.3.3	R	A <i>distributor</i> must take all reasonable steps to obtain the information in <i>PROD 4.2.29R</i> when <i>distributing</i> insurance products <i>manufactured</i> by any <i>person</i> to which <del><i>IDD-manufacturer</i></del> product governance requirements in <i>PROD 4.2</i> ; <del>(or equivalent requirements of another <i>EEA State</i> or directly applicable requirements of the <i>IDD POG Regulation</i>)</del> do not apply.
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...

4.3.5	<del>EU</del>	10(1)	...
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	<u>UK</u>		
			[ <b>Note:</b> first sub-paragraph of article 10(1) of the <i>IDD POG Regulation</i> ]
4.3.6	<del>EU</del> <u>UK</u>	10(2) ...	
			[ <b>Note:</b> article 10(2) of the <i>IDD POG Regulation</i> ]
4.3.7	<del>EU</del> <u>UK</u>	10(3) ...	
			[ <b>Note:</b> article 10(3) of the <i>IDD POG Regulation</i> ]
4.3.8	<del>EU</del> <u>UK</u>	10(4) ...	
			[ <b>Note:</b> article 10(4) of the <i>IDD POG Regulation</i> ]
4.3.9	<del>EU</del> <u>UK</u>	10(5) ...	
			[ <b>Note:</b> article 10(5) of the <i>IDD POG Regulation</i> ]
4.3.10	<del>EU</del> <u>UK</u>	10(6) ...	
			[ <b>Note:</b> article 10(6) of the <i>IDD POG Regulation</i> ]
4.3.11	<del>EU</del> <u>UK</u>	11 ...	
			[ <b>Note:</b> article 11 of the <i>IDD POG Regulation</i> ]
...			
4.3.13	<del>EU</del> <u>UK</u>	12	Relevant actions taken by insurance distributors in relation to their product distribution arrangements shall be duly documented, kept for audit purposes and made available to the <del>competent authorities</del> <u>Financial Conduct Authority</u> upon request.
			[ <b>Note:</b> article 12 of the <i>IDD POG Regulation</i> ]
4.3.14	<del>EU</del> <u>UK</u>	10(1) ...	
			[ <b>Note:</b> second sub-paragraph of article 10(1) of the <i>IDD POG Regulation</i> ]