

**CONDUCT OF BUSINESS SOURCEBOOK (MIFID ORG REGULATION
AMENDMENT) INSTRUMENT 2022**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 27 May 2022.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.
- F. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expression “MiFID Org Regulation”.

Notes

- G. In Annexes A and B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Conduct of Business Sourcebook (MiFID Org Regulation Amendment) Instrument 2022.

By order of the Board
26 May 2022

Annex A

Amendments to the Glossary of definitions

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

Amend the following definitions as shown.

- durable medium*
- (a) paper; or
 - (b) any instrument which enables the recipient to store information addressed personally to the recipient in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored. In relation to the *equivalent business of a third country investment firm, MiFID optional exemption business* or *collective portfolio management*, if the relevant *rule* derives from the *MiFID Org Regulation* or is a *rule* which implemented the *UCITS Directive*, the *UCITS implementing Directive* or the *UCITS implementing Directive No 2* the instrument used must be:
 - (i) appropriate to the context in which the business is to be carried on; and
 - (ii) specifically chosen by the recipient when offered the choice between that instrument and paper.

If the relevant *rule* derives from the *MiFID Org Regulation*:

- (iii) the requirements in (i) and (ii) above only apply in relation to *retail clients* or potential *retail clients*;
- (iv) where the *client* or potential *client* is a *retail client*, or potential *retail client*, who has requested to receive the information on paper, that information must be provided on paper and free of charge; and
- (v) *firms* must provide all information required to be provided in a *durable medium* by the relevant *rule* to *clients* or potential *clients* in electronic format, except where the *client* or potential *client* is a *retail client*, or potential *retail client*.

In *ICOBS* and, in relation to *life policies*, in *COBS*:

- ~~(ii)~~ the instrument used must be appropriate in the context
- (vi) of the business conducted between the *insurance*

distributor and (for *ICOBS*) the *customer* or (for *COBS*) the *client*; and

- (iv) the *customer* (for *ICOBS*) or *client* (for *COBS*) must be given the choice between information on paper and the instrument used, and must specifically choose the latter medium.
- (vii)

For the purposes of this definition, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the *firm* and the *client* is, or is to be, carried on if there is evidence that the *client* has regular access to the internet. The provision by the *client* of an e-mail address for the purposes of the carrying on of that business is sufficient. [Note: article 2(f) of, and Recital 20 to, the *Distance Marketing Directive*, articles 2(1)(18), 23(4) and 23(6) of the *IDD*, article 4(1)(62) of *MiFID* and article 3(1), (1A) and (1B) of the *MiFID Org Regulation*, articles 75(2) and 81(1) of the *UCITS Directive*, article 20(3) of the *UCITS implementing Directive* and article 7 of the *UCITS implementing Directive No 2*]

website conditions the following conditions:

- (1) the provision of information by means of a website must be appropriate to the context in which the business between the *firm* and the *client* is, or is to be, carried on (that is, there is evidence that the *client* has regular access to the internet, such as the provision by the client of an e-mail address for the purposes of the carrying on of that business);
- (2) the *client* must specifically consent to the provision of that information in that form (only in the case of a retail client if the relevant rule derives from the *MiFID Org Regulation*);
- (3) the *client* must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
- (4) the information must be up to date; and
- (5) the information must be accessible continuously by means of that website for such period of time as the *client* may reasonably need to inspect it.

[Note: article 23(5) of the *IDD*, article 3 of the *MiFID Org Regulation* and article 38(2) of the *KII Regulation*]

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

6 Information about the firm, its services and remuneration

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

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Costs and associated charges disclosure: MiFID

6.1ZA.1 UK 50(1) 4 For the purposes of providing information to clients on all costs and charges pursuant to [COBS 6.1ZA.11R] (“the relevant rule”), investment firms shall comply with the detailed requirements in paragraphs 2 to 10.

~~Without prejudice to the obligations set out in the relevant rule, 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.~~

~~Without prejudice to the obligations set out in the relevant rule, 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.~~

50(1A) (1) Subject to subparagraph (2), the requirements laid down in the relevant rule do not apply to services provided to professional clients.

(2) The requirements laid down in the relevant rule do apply to services provided to professional clients for investment advice and portfolio management.

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Timing of disclosure: MiFID business

- 6.1ZA.1 UK 46(2) ~~Investment firms shall~~ Subject to paragraph 2A, investment firms
7 must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.
- 46(2A) Where the agreement to buy or sell a financial instrument is
) concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion:
- (a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and
- (b) subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:
- (i) electronic format; or
- (ii) where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.
- 46(2B) The conditions referred to in paragraph 2A(b) are:
)
- (a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and
- (b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.
- [**Note:** article 46(2), (2A) and (2B) of the *MiFID Org Regulation*]

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Medium of disclosure: MiFID business

- 6.1ZA.1 UK 46(3) The information referred to in paragraphs 1 ~~and 2~~ to 2B shall be
9 provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.
- [**Note:** article 46(3) of the *MiFID Org Regulation*]

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8A Client agreements (MiFID provisions)

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

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General requirement for information to clients

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8A.1.6 UK 46(2) ~~Investment firms shall~~ Subject to paragraph 2A, investment firms must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

46(2A)
) Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion:

(a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and

(b) subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:

(i) electronic format; or

(ii) where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.

46(2B)
) The conditions referred to in paragraph 2A(b) are:

(a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and

(b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.

[**Note:** article 46(2), (2A) and (2B) of the *MiFID Org Regulation*]

8A.1.7 UK 46(3) The information referred to in paragraphs 1 ~~and 2~~ to 2B shall be provided in a durable medium or by means of a website (where it

does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

[**Note:** article 46(3) of the *MiFID Org Regulation*]

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

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9A.2 Assessing suitability: the obligations

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Switching: MiFID business

9A.2.18 UK 54(11) When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.

The requirements laid down in the first subparagraph do not apply to services provided to professional clients.

[**Note:** article 54(~~13~~ 11) of the *MiFID Org Regulation*]

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14 Providing product information to clients

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14.3A Information about financial instruments (MiFID provisions)

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Timing of disclosure

14.3A.7 UK 46(2) ~~Investment firms shall~~ Subject to paragraph 2A, investment firms must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

46(2A) Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion:

- (a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and
- (b) subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:
 - (i) electronic format; or
 - (ii) where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.

46(2B) The conditions referred to in paragraph 2A(b) are:
)

- (a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and
- (b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.

[**Note:** article 46(2), (2A) and (2B) of the *MiFID Org Regulation*]

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Medium of disclosure

14.3A.9 UK 46(3) The information referred to in paragraphs 1 ~~and 2~~ to 2B shall be provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

[**Note:** article 46(3) of the *MiFID Org Regulation*]

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

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16A.3 Occasional reporting: MiFID business

Execution of orders other than when undertaking portfolio management

16A.3.1 UK 59(1) Investment firms having carried out an order on behalf of a ~~client~~ retail client or a professional client, other than for portfolio management, shall, in respect of that order:

- (a) promptly provide the ~~client~~ retail client or professional client, as applicable, in a durable medium, with the essential information concerning the execution of that order;
- (b) send a notice to ~~the client~~ a retail client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

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59(3) In the case of retail client orders relating to units or shares in a collective investment undertaking which are executed periodically, investment firms shall either take the action specified in point (b) of paragraph 1 or provide the retail client, at least once every six months, with the information listed in paragraph 4 in respect of those transactions.

59(4) The notice referred to in point (b) of paragraph 1 shall include such of the following information as is applicable and, where relevant, in accordance with the regulatory technical standards on reporting obligations adopted in accordance with Article 26 of Regulation (EU) No 600/2014:

- (a) the reporting firm identification;
- (b) the name or other designation of the retail client;
- (c) the trading day;
- (d) the trading time;
- (e) the type of the order;
- (f) the venue identification;
- (g) the instrument identification;
- (h) the buy/sell indicator;
- (i) the nature of the order if other than buy/sell;
- (j) the quantity;
- (k) the unit price;
- (l) the total consideration;

- (m) a total sum of the commissions and expenses charged and, where the retail client so requests, an itemised breakdown including, where relevant, the amount of any mark-up or mark-down imposed where the transaction was executed by an investment firm when dealing on own account, and the investment firm owes a duty of best execution to the retail client;
- (n) the rate of exchange obtained where the transaction involves a conversion of currency;
- (o) the retail client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the retail client;
- (p) where the retail client's counterparty was the investment firm itself or any person in the investment firm's group or another retail client of the investment firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of point (k), where the order is executed in tranches, the investment firm may supply the retail client with information about the price of each tranche or the average price. Where the average price is provided, the investment firm shall supply the retail client with information about the price of each tranche upon request.

- 59(5) The investment firm may provide the retail client with the information referred to in paragraph 4 using standard codes if it also provides an explanation of the codes used.

[**Note:** article 59 of the *MiFID Org Regulation*]

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Reporting obligations in respect of eligible counterparties

- 16A.3.5 UK 61 ~~The requirements applicable to reports for retail and professional clients under Articles 49 and 59 shall apply unless investment firms enter into agreements with eligible counterparties to determine content and timing of reporting. in articles 46 to 51 and 59 do not apply to services provided to eligible counterparties.~~

[**Note:** article 61 of the *MiFID Org Regulation*]

16A.4 Periodic reporting

Provision by a firm and contents: MiFID business

- 16A.4.1 UK 60(1) Investments firms which provide the service of portfolio management to retail clients or professional clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.
- 60(2) The periodic statement required under paragraph 1 shall provide a fair and balanced review of the activities undertaken and of the performance of the portfolio during the reporting period and shall include, where relevant, the following information to retail clients:
- (a) the name of the investment firm;
 - ...
- 60(3) The periodic statement referred to in paragraph 1 shall be provided to retail clients once every three months, except in the following cases:
- (a) where the investment firm provides its retail clients with access to an online system, which qualifies as a durable medium, where up-to-date valuations of the client's portfolio can be accessed and where the client can easily access the information required by Article 63(2) and the firm has evidence that the client has accessed a valuation of their portfolio at least once during the relevant quarter;
 - (b) in cases where paragraph 4 applies, the periodic statement must be provided at least once every 12 months;
 - (c) where the agreement between an investment firm and a retail client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

The exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by 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.

- 60(4) Investment firms, in cases where the retail client elects to receive information about executed transactions on a transaction-by-transaction basis, shall provide promptly to the retail client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.
- The investment firm shall send the retail client a notice confirming the transaction and containing the information referred to in Article 59(4) no later than the first business day following that execution or, where the confirmation is received by the investment firm from

a third party, no later than the first business day following receipt of the confirmation from the third party.

The second subparagraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

[**Note:** article 60 of the *MiFID Org Regulation*]

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Additional reporting obligations for portfolio management or contingent liability transactions

16A.4.3 UK 62(1) Investment firms providing the service of portfolio management ~~shall~~ to a retail client must inform the client where the overall value of the portfolio, as evaluated at the beginning of each reporting period, depreciates by 10% and thereafter at multiples of 10%, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

62(2) Investment firms that hold a retail client account that includes positions in leveraged financial instruments or contingent liability transactions shall inform the client, where the initial value of each instrument depreciates by 10% and thereafter at multiples of 10%. Reporting under this paragraph should be on an instrument-by-instrument basis, unless otherwise agreed with the client, and shall take place no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

[**Note:** article 62 of the *MiFID Org Regulation*]